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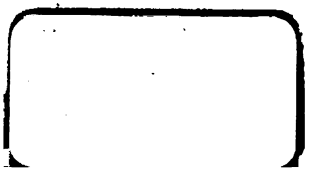
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SEVENTH ANNUAL MEETING

OF THE

BAR ASSOCIATION

OF THE

STATE OF KANSAS.

HELD IN THE CITY OF TOPEKA,

JANUARY 7 and 8, 1890.

TOPEKA, KANSAS:
THE REED-MARTIN PRINTING CO., PRINTERS AND BINDERS.
1890.

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Officers for the Years 1883–4.

President, ... Albert H Horton | *Secretary*, ... W H Rossington
Vice President, ... N T Stephens | *Treasurer*, ... D M Valentine

Executive Council.

D M Valentine, *Chairman.*

James Humphrey — David Martin — J H Gillpatrick — Frank Doster

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Officers for the Year 1885.

President, ... Albert H Horton | *Secretary*, ... W H Rossington
Vice President, ... W A Johnston | *Treasurer*, ... Daniel M Valentine

Executive Council.

Daniel M Valentine, *Chairman.*

James Humphrey — David Martin — E S Torrance — L Houk

Delegates to American Bar Association.

A S Everest — A L Redden — James Humphrey

Officers for the Year 1886.

President, ... Albert H Horton | *Secretary*, ... John W Day
Vice President, ... E S Torrance | *Treasurer*, ... Daniel M Valentine

Executive Council.

W A Johnston, *Chairman.*

John Guthrie — A W Benson — M B Nicholson — John H Mahan

Delegates to American Bar Association.

David J Brewer — W H Rossington — Fred D Mills

Officers for the Year 1887.

President, ... Solon O Thacher | *Secretary*, ... John W Day
Vice President, ... Henry C Sluss | *Treasurer*, ... D M Valentine

Executive Council.

W A Johnston, *Chairman.*

C B Graves — Robert Crozier — Geo S Green — T F Garver

Delegates to American Bar Association.

W W Guthrie — A L Redden — T A Hurd

Officers for the Year 1888.

President, ... W A Johnston | *Secretary*, ... John W Day
Vice President, ... Eugene F Ware | *Treasurer*, ... D M Valentine

Executive Council.

John Guthrie, *Chairman*

S B Bradford — George J Barker — J W Ady — J H Mahan

Delegates to American Bar Association.

Solon O Thacher — Albert H Horton — Henry C Sluss

Officers for the Year 1889.

President, ... John Guthrie | *Secretary*, ... Chas S Gleed
Vice President, ... T F Garver | *Treasurer*, ... D M Valentine

Executive Council.

B F Simpson, *Chairman.*

W W Scott — L B Kellogg — A W Benson — Chas S Hayden

Delegates to American Bar Association.

J W Green — J H Gillpatrick — Charles Monroe

Delegates to National Bar Association.

Robert Crozier — M B Nicholson — Robert M Eaton — George S Green
H L Alden — J W Ady

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OFFICERS FOR THE YEAR 1890.

President,	ROBERT CROZIER.
Vice President,	CHARLES B. GRAVES.
Treasurer,	HOWELL JONES.
Secretary,	C. J. BROWN.

EXECUTIVE COUNCIL.

B. F. SIMPSON, *Chairman*.

JOHN GUTHRIE. CASE BRODERICK.
W. W. SCOTT. R. M. EATON.

DELEGATES TO AMERICAN BAR ASSOCIATION.

GEORGE S. GREEN. W. C. PERRY.
L. B. KELLOGG.

DELEGATES TO NATIONAL BAR ASSOCIATION.

W. A. JOHNSTON. B. P. WAGGENER.
A. H. ELLIS. J. W. GLEED.
G. F. LITTLE. J. F. MCMULLEN.

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MINUTES OF THE SEVENTH ANNUAL MEETING.

TOPEKA, January 7, 1890.

The Seventh Annual Meeting of the Bar Association of the State of Kansas was called to order at 7:30 o'clock P. M., in the senate chamber, with the President, John Guthrie, in the chair.

The Secretary being absent S. B. Bradford was, on motion, chosen Secretary *pro tem.*

The reading of the minutes of the last annual meeting was dispensed with.

On motion of A. H. Horton, a committee of five on nomination of officers for the ensuing year was appointed by the President, as follows: A. H. Horton, George S. Green, S. O. Thatcher, W. W. Scott and B. F. Simpson.

The annual address of the President was delivered by John Guthrie.

Addresses were delivered by Thomas Ewing, Jr., of New York; S. A. Kingman, of Topeka; L. D. Bailey, of Garden City; S. O. Thatcher, of Lawrence, and A. L. Williams of Topeka.

The Memorial Committee, through its Chairman, John Martin, reported the following resolutions on the death of John P. Usher, which were adopted:

Since the last session of your body, death has visited the ranks of the legal profession, in common with our fellow men, though the grim messenger has not called a single member of this Association.

On the 13th day of April, 1889, at the City of Philadelphia, Hon. John P. Usher, of Lawrence, one of the oldest, the ablest and the most distinguished members of the Kansas Bar, quietly and peacefully passed away, and was subsequently buried in the beautiful cemetery near his home.

In view of the fact that a memorial address upon the life and character of Judge Usher will be delivered before this Association at its present session by Hon. A. L. Williams, your Committee deem it proper to refrain from any extended notice of the character and services of our

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distinguished friend and brother. and content ourselves with submitting, for the consideration and action of this Association the following preamble and resolutions, in substance, recently adopted at a meeting of the Bar of the United States Circuit Court for the District of Kansas, and which admirably portrays the character and services of Judge Usher, and most fittingly express our appreciation of his life and character as a lawyer, a citizen and a friend.

WHEREAS, John P. Usher, having departed this life, since the last annual session of this body, we take this occasion as an appropriate time to give expression to our profound sorrow at the sad event, and of our sincere respect for his memory. Judge Usher was born in the town of Brookfield, in Madison county, New York, on the 19th of January, 1816. He was admitted to practice law before the Chancery Court of New York, January 17th, 1839, by Chancellor Walworth, to the Supreme Court of that State, January 18th, 1839, and to the Supreme Court of the United States, February 1st, 1859. His services and character, in the faithful and honorable discharge of public duty, as a member of the cabinet of Abraham Lincoln, and as one of the ablest and most accomplished members of the legal profession, and as one of the most distinguished and useful citizens of the Republic, is kindly remembered and affectionately revered by all the people. The Bar, more than all others remember with gratitude and pardonable pride his unsullied character and masterful ability, as a typical American lawyer, and point thereto as proof of the exaltation and power which can be achieved by the practice of integrity and an honorable devotion to duty. His never failing courtesy and uniform kindness of heart have won for him the universal and cordial esteem, admiration and good will of his fellow citizens, and makes it fitting that this Association should in this manner make a lasting record of the deep and sincere regret which its members feel at his loss; therefore,

Resolved, 1st, That the members of the Kansas State Bar Association tender to the berieved family of our dead brother, their warmest and tenderest sympathy, with the further assurance that John P. Usher will always live in our memories, as an ornament to his profession, and as an honor to his age, to his race and to his country.

Resolved, 2d, That an engrossed copy of the foregoing preamble and resolution, duly signed by the President and Secretary of this Association, be transmitted by the Secretary to the family of the deceased.

The same committee also reported the following resolutions on the death of John P. Greer, which were adopted:

On the 28th day of November, 1889, Hon. John P. Greer died at his home in the City of Topeka, and now peacefully rests from his labors.

Judge Greer was one of the pioneer lawyers of Kansas, and materially assisted in founding its jurisprudence, and his death demands something more than a merely passing notice. He was born in the County of Montgomery, in the State of Ohio, on the 21st day of October, 1812. In early life he moved with his parents to Darke County, Ohio,

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and continued to reside in that county until his removal to Bluffton, Wells County, Indiana, in 1841. In November 1856 he left Indiana and settled upon a farm, near the City of Topeka, which he afterwards pre-empted.

Judge Greer was a poor boy, and by his own unaided energy and industry, won and retained an honorable and useful position amongst his fellow men. He had read law to some extent and had practiced before Justice Courts in Ohio before moving to Indiana, and continued this practice after his removal to that State, and in 1842 was regularly admitted to practice in the Circuit Court of Wells and adjoining counties. Feeling the need and value of as perfect a knowledge of the law as possible, in 1848 he entered the law department of the University of Indiana, and in 1849 was regularly graduated.

Judge Greer was married June 20th, 1837, to Miss Elizabeth Patty, at Milton, Miami County, Ohio, by whom he had seven children none of whom survive him. Mrs. Greer still lives in Topeka, honored and respected by all who know her. Soon after his settlement in Kansas, Judge Greer opened a law office in Topeka, and soon afterwards formed a partnership with Hon. Wm. P. Doughitt, which continued for many years. From the early part of 1857 until his death, Judge Greer was a regular practitioner in the District Court of Shawnee County, and in the Supreme and Federal Courts. Upon his settlement in Kansas, he took an active interest and prominent part in the great questions then commanding public attention. He was an ardent Free State man. He was one of the Representatives of the County of Shawnee in the Convention that framed our present Constitution, and was Chairman of the Committee on the formation of the Executive Department of the State Government. In that body he was a quiet, but an earnest and intelligent worker, and by his uniform courtesy and kindness, soon won and ever afterwards retained the respect and confidence of his associates.

Judge Greer was a sincere and ardent lover of his country. He served with gallantry in the State militia during the Price raid in October 1864, and in the battle on the Blue, between the Kansas State troops and the confederate forces, he was seriously wounded in the knee.

For a brief period in 1866 and 1867 he was associated with Hon. A. L. Williams in the management and editorial control of the Topeka Daily Tribune.

Judge Greer was a good citizen, loyal and faithful to his friends. He was a man of strong convictions. He was kind hearted, but severely earnest. He had no appreciation of humor, and indulged a hearty contempt for all jokes. He was sincere in his friendship, honest and earnest in his convictions. He was essentially a man of facts, without the shadow of fancy in his make-up.

As a lawyer he was an excellent type of the old fashioned attorney. He had a keen appreciation of the duties and amenities of the profession. He believed that a lawyer's word should stand, unchallenged, and that his promise should be equivalent to a performance.

He was not a progressive lawyer. He believed in old books, old

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forms, old styles and manners, and in old times. To him all reforms and all progress were only shams, subterfuges and false pretenses. He believed firmly that the Pandects and Bacon's Abridgement were epitomes of all legal learning, and that Coke upon Littleton and Blackstone's Commentaries were the perfection of human reasoning, and to the day of his death, his favorite book of reference in the court room was Blackstone. Occasionally he refered to Wick's Practice, and the early Blackford Reports, but it was only for the purpose of establishing the fact that Judge Wick and the old Supreme Court of Indiana acknowledged and followed the leadership of Blackstone.

In conclusion your Committee respectfully submit the following resolutions for the consideration of your body:

Resolved, That we have learned with regret of the death of Hon. John P. Greer, and we tender to his family our sincere sympathy in their bereavement, and assure them that we shall ever kindly remember his many virtues, as a man, and his sterling worth as a lawyer.

Resolved, That a copy of the foregoing resolution, signed by the president and secretary of this body, be transmitted by the secretary to the family of our deceased brother.

On motion of J. W. Day, Thomas Ewing, Jr., S. A. Kingman and L. D. Bailey were elected honorary members of this Association.

The Association adjourned to 10 o'clock A. M., January 8th, 1890, at which hour it reconvened in the Senate Chamber.

The Executive Council made the following report, which was adopted:

The Executive Council report the names of the following applicants for membership and recommend their election:

J. F. McMullen, Winfield; George Getty, Syracuse; A. J. Abbott, Garden City; Rankin Mason, Topeka; T. B. Wall, Wichita; Howell Jones, Topeka; W. E. Brown, Newton; R. B. Welch, Topeka; E. A. McFarland, Lincoln; Milton Brown, Garden City; L. H. Thompson, Norton; G. A. Huron, Topeka; John E. Hessin, Manhattan; A. A. Godard, Clay Center; G. F. Little, Junction City; G. A. Vandeveer, Hutchinson; J. B. Larimer, Topeka; E. W. Cunningham, Emporia; C. S. Bowman, Newton; G. L. Douglass, Wichita; S. J. Osborn, WaKeeney; Henry Keeler, Topeka; W. F. Rightmire, Topeka; K. E. Willcockson, Oakley; H. J. Radcliffe, Cottonwood Falls; C. E. Benton, Iola; E. C. Little, Ness City; H. C. Johns, Larned; E. F. Robinson, Osborne; A. L. L. Hamilton, ElDorado; Dennis Madden, Cottonwood Falls.

The Treasurer made the following report, which was adopted:

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TO THE BAR ASSOCIATION OF THE STATE OF KANSAS:—

It appears from my last report to the Association that on January 8th, 1889, there was in the Treasury.....	$ 23 04
Since that report was made, and up to the present time, I have received as admission fees of twenty-eight members.....	140 00
Total.....	$163 04
Since my last report, I have paid out on the orders of the Executive Council, as expenses of the Association	$163 04
Hence nothing remains in the Treasury.	
There is still due to the George W. Crane Publishing Co., as a balance due for printing proceedings, etc.....	$11 21

All annual dues up to the last meeting have been remitted.

Respectfully submitted this January 8th, 1890,

D. M. VALENTINE, *Treasurer.*

On motion of T. F. Garver, and after a general discussion of the matter, it was resolved that the public and private interests of the people of this State demand the adoption of the proposed constitutional amendment, increasing the number of Justices of the Supreme Court.

The Committee on Nomination of officers for the ensuing year, through its chairman. A. H. Horton, reported the following nominations, and the nominees were elected:

President:—Robert Crozier, Leavenworth.

Vice-President:—Charles B. Graves, Emporia.

Treasurer:—Howell Jones, Topeka.

Secretary:—C. J. Brown, Blue Rapids.

Executive Council:—B. F. Simpson, Topeka; John Guthrie, Topeka; W. W. Scott, Emporia; Case Broderick, Holton; R. M. Eaton, Atchison.

Delegates to the American Bar Association:—George S. Green, Manhattan; L. B. Kellogg, Emporia; W. C. Perry, Fort Scott.

Delegates to the National Bar Association:—W. A. Johnston, Minneapolis; B. P. Waggener, Atchison; G. F. Little, Junction City; J. F. McMullen, Winfield; A. H. Ellis, Beloit; J. W. Gleed, Topeka.

The President announced the following Committees:

Judiciary Committee:—S. O. Thacher, Lawrence; C. W. Smith, Stockton; A. J. Abbott, Garden City; W. C. Webb, Topeka; H. C. Sluss, Wichita.

Committee on Amendments to the Laws:—F. P. Harkness, Clay Center; George S. Green, Manhattan; C. Angevine, Mankato; C. S. Gleed, Topeka; T B. Wall, Wichita.

Memorial Committee:—John Martin, Topeka; E. Hutchinson, Marysville; J. W. Ady, Newton.

A. H. Horton, J. Jay Buck and David Overmyer, the Com-

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mittee appointed to draft suitable resolutions on the promotion of David J. Brewer, a member of this Association, to the Bench of the Supreme Court of the United States, presented the following resolutions, which were adopted:

WHEREAS, The president of the United States has recently appointed to the Bench of the Supreme Court thereof, one of the first members of this Association, a former practicing attorney of this State, and who for twelve years adorned, dignified and graced the Supreme Bench of this State—bringing to the discharge of all his various duties a thorough knowledge of the law, the habits of a student, a ripe scholarship and an unblemished character; therefore be it, by the State Bar Association of Kansas,

Resolved: That in the appointment of Hon. David J. Brewer, as one of the Justices of the ablest and most respected judicial tribunals of the world, this Association, the Bar of Kansas, his old neighbors and friends, and the large circuit over which he has recently presided, all rejoice—all are honored.

Resolved:—That in this worthy recognition of merit, the President who nominated, and the Senate who confirmed, have done themselves honor and won from us renewed manifestations of gratitude and esteem.

Resolved: That a copy of these resolutions be sent to the President of the United States, our Senators in Congress, and to our esteemed frater, Hon. David J. Brewer.

The Committee on Amendments to the Laws, through its Chairman, A. H. Horton, submitted the following report, which was received and ordered to be printed in the report of the annual proceedings of the Association:

The Committee on Amendments to the Laws begs leave to report that various matters have been, from time to time, considered by it, from which it has selected a few subjects only for present report. The most difficulty in the preparation of this report has been to determine where to begin in suggesting amendments and where to stop.

We call attention to the Act of March 2, 1872, relating to the death penalty. Under the construction given by all the Governors of the State to the language of that Act ever since it has been in force, capital punishment has been practically abolished. The law as it now stands is inconsistent and inharmonious. The attention of the Legislature has been directed to this subject by the Governors for nearly seventeen years, but as yet no action has been decisively taken.

It seems to us that this matter calls for immediate attention when the next Legislature shall convene. If a majority of the members of the Legislature desire to abolish the death penalty, it should be done in express terms. On the other hand, if a majority of the members of the Legislature are in favor of restoring capital punishment, then the Act of March 2, 1872, should be materially changed or repealed. A

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part of the people of the State seem to desire to abolish the death penalty, another portion seem desirous of retaining it. It is unnecessary to discuss in this report, *pro* or *con* the policy of the restoration of the death penalty, as the members of the Committee differ widely in their views, but all concur that the statute relating to capital punishment should be changed.

Recently, the subject of divorce has been largely discussed in the legal and other public journals of the country. It is contended upon the part of some, that marriage is a failure, because freedom from the marriage bond is too easily obtained. On the other hand, many argue that greater liberty should be allowed in divorcement. It is not an argument against the law that oftentimes gross injustice is done in individual cases when divorces are granted. The real question is, whether the good the statute does is sufficient to counterbalance the wrongs which are often brought to pass. The statute relating to divorces, like all statutes, must necessarily work both good and harm. If upon the whole, more good is effected than harm, the law is desirable, although it has defects. We do not think the happiness of married parties is promoted by placing obstructions in the way of legal separation. To require a woman to be bound in marriage to a man who has defrauded, deceived, or betrayed her, who has inflicted upon her personal abuse, squandered the means for which alone perhaps he sought her hand, who refuses either "to love, honor, or keep her," is not only a gross injustice to the woman, but is a crime against society. Has such a man, in so wronging a confiding woman, whom under false pretense of love he has inveigled to be his wife, committed no crime? If he is a thief of property, the corrupt forger of another man's name, a swindler of another man's money, he can be arrested, tried and sent to the penitentiary. But if he has stolen the affection of an innocent and loving woman, gambled away her patrimony, squandered it in dissipation and riotous living, abandoned and refused to provide for her, he has committed no offense under the existing statutes, of which the State takes cognizance. He steps from the court room, freed by the decree of the judge, on payment of costs, from the obligation of the marriage contract he has basely violated, ready to seek another victim. The better remedy, we think, is to make the conduct of the party to the marriage contract, who is guilty of fraud, wrong or cruelty, punishable by fine or imprisonment, or both

The statute permits the courts to grant a divorce for the following, among other causes: Abandonment, adultry, extreme cruelty, fraudulent contract, habitual drunkenness and gross neglect of duty. If some amendment were made to the laws under which the guilty party who commits any of these acts, when a divorce is granted, could be punished by heavy fine or imprisonment, such action, in the opinion of your committee, would result in a diminution of divorce suits on the dockets of the State,—especially in cases where the guilty party is a resident of the State and amendable to its laws. The divorce procedure should be in the nature of a criminal prosecution, and when allowed, should furnish ground for an information or indictment. The County Attorney should

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be required to attend the hearing of all divorce actions, and the testimony at such a hearing should be reduced to writing, and the party found guilty of any of the acts or offenses above stated, be required to give bond for immediate prosecution.

Society has an interest, as well as the parties to a marriage, to see that the obligations thereof are not violated intentionally or willfully. Abandonment, extreme cruelty, fraudulent contracts, habitual drunkenness and gross neglect of duty on the part of a party to a marriage, ought to be severely punishable for the public good. They are offenses which society ought not to overlook, or too easily condone.

Upon a free ballot and an honest count stand the whole superstructure of a Republican form of Government. Anything that will assist to a free ballot, untainted and unpurchased, adds strength and stability to our popular institutions. The Australian method of voting, as it is called, has been tried in various States within the past year, and thus far very successfully. Lately, in Massachusetts, this system more than fulfilled every anticipation of its friends, and falsified every prediction of its enemies. The law in that State was an application of the Australian system. In all important principles it was a copy of the bill which was drafted by the Committee of the Commonwealth Club of New York City in the winter of 1887, and which became the basis of the two so-called Saxton bills that Governor Hill vetoed in 1888 and in 1889. These principles are secret voting in compartments, exclusively official ballots, printed and distributed at public expense, and nominations by means of petitions or nomination papers, as well as by regular party organizations and conventions. The names of all candidates are printed on the same ballot, and the voter must indicate his choice by an "X" opposite the name of each candidate for whom he wishes to vote. Under this method, the voter is taken charge of from the moment he enters the polling booth, is guarded against annoyances of all kinds, is helped in every way to prepare his ballot, has a path marked out for him to follow in depositing it, and a separate door for him to depart from when his work is done. He could not go astray if he tried. That such a system as this should be called "complicated" is, in the light of experience, an absurdity. It is small wonder that the success of the Massachusetts law has created so general demand for similar laws; it is a safe prediction to make, that within five years every State in the Union will have adopted a like statute. We therefore suggest the trial of this system in our State as soon as appropriate legislation can be enacted. This system is not as necessary in Kansas as in Chicago, Boston, New York and other large cities where the corruption of the voters is the rule, and not the exception, but if the system has worked so well in all other States, there is no reason why Kansas should not also adopt it. Kansas generally takes the best of everything that is in sight, and if there is to be a ballot reform, we want it adopted. If this ballot reform were practicable in county seat elections, possibly the courts might be relieved of some of the gross charges of fraud, bribery and violence, which always attend the contests in those cases.

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One of the members of the Committee, the learned District Judge of Wyandotte County, suggests that the Mechanics Lien Law, passed last session, should be repealed and the old law adopted with amendments in a few matters; the amendments, however, to be drawn by a person who has had more practical experience concerning a lien law than the party who framed the present act. He also suggests that the law relating to garnishments passed last session, should be repealed, or modified, but a copy of it, he says, "should be preserved as a thing to be worshipped," "for there is nothing," he writes, "like it in the heavens above or in the earth beneath," and therefore it will be entirely proper to bow down to it.

The Committee further suggests, as great trouble and difficulties continue to arise from the incongruous and inharmonious amendments to the statutes, that the Committees of Judiciary of the House and Senate, should be extremely careful to examine the whole law to which any amendment relates, before making a favorable report thereon. Of course, unless the amendment would better the statute, it should not be considered or adopted. The lawyers of the State are the architects of government and the builders of the law; therefore, the lawyers in the Legislature, above all other men, should see that no useless or unnecessary amendment is enacted. And the Judiciary Committees of the House and Senate should give sufficient time to their respective reports to prevent the frequent errors of legislation occuring from amendments, which are so often rushed through without consideration or discussion.

The following letter and accompanying suggestions are submitted to the Association, in connection with this report:

KANSAS CITY, KAS., Dec. 28th, 1889.

C. S. GLEED, ESQ.,
Secretary State Bar Association, Topeka, Kansas.

DEAR SIR: At the request of Judge O. L. Miller, of this District, a member of the Committee on Amendments to the Laws, I make the enclosed notations that have occurred to me as desirable changes in our laws. There are no doubt many others, but these are prominent, brought to notice in my practiee, and I herewith enclose you a copy for what they are worth.

Yours truly, F. D. MILLS.

First—Chapter 46 Compiled Laws of 1885; subject, Guardian and Ward. The Comp. Laws of 1868 had a provision directly providing for the sale or mortgaging of the real estate of the minor for such reasons as were therein provided, upon a petition therefor to the Probate Court. Chap. 78, Sec. 3 of the Laws of 1874, repealed Sec. 11 of the Laws of 1868, above referred to, and evidently intended to supply its place but omitted to do so clearly as will be noticed by a foot note to Chap. 46, mentioned

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on page 465 of Dasslers Statutes of 1885. By the amendments of 1875 which appear in Secs. 27 and 28 of Chap. 46, provisions relating to sales or mortgages are out of their natural order and make the chapter as a whole a very bungling enactment, as will be seen by the comparison of several sections, and should be revised and rearranged in their proper order.

Second—In actions of ejectment for the trial of title to real estate, Sec. 603 of Art. 25 of the Code of Civil Procedure, provides for the empaneling of a jury of twelve men by the sheriff and clerk. By Sec. 604 the duties of this jury are in a manner specified. They are to assess the value of all lasting and valuable improvements made previous to the party receiving actual notice to the adverse claim; they are also to assess all damages for waste, together with the net annual value of rents and profits which the occupants may have received, etc No provision is made for a hearing before the jury; nothing is provided as to the method of procedure, the introduction of evidence or the argument of counsel. It seems to contemplate only an actual view by the jury without evidence to determine many important questions that actual experience has shown could not be determined by the mere view of the premises. The writer tried such a case before the Hon. David Martin, while Judge of the Second Judicial District, in Doniphan county, wherein it was held that under this statute no evidence could be heard by the jury and that nothing could be done to throw any light on the value of rents, the cost of improvements, the nature and amount of waste, or the actual profits received by the occupant, when it was apparent to the Court in that case that the jury should have been so informed had the statute provided for the hearing of the questions presented. We think the form of procedure should be pointed out by the statute.

Third—In many, if not most of the states of the Union, there is a provision of law requiring the municipal authorities offering any municipal bonds for sale to advertise for bids and to sell to the highest bidder. We think this is a wise provision for the citizens and tax payers, and some proper provision therefor should find its way upon the statutes of Kansas.

Fourth—The tendency of the times is toward the formation of corporations for the accomplishment of individual enterprise, requiring combination of capital, where once it took the form of partnerships, or joint stock companies, having only partnership rights and held to partnership liabilities. At this time nearly every enterprise known to the business world is by law a proper object of corporate existence. The result is that legislation in new states has not kept pace with the necessity for reaching these corporate bodies through proceedings in court. Many, if not most of the States provide for reaching the interest of an individual in a corporation, by his creditors, by proceedings in attachment. No such provision is found in the laws of this State. If a debtor is absent from the State whereby personal service and consequently personal judgment cannot be obtained, whereby equitable interests may be reached in aid of execution, he may have ever so much property tied up

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in corporate stock without his creditors being able to reach the same. We think the law should be amended in this respect. Again, many of the states have provisions for dealing with corporations, so far as individuals are concerned, very much the same as though a partnership relation existed, by provision for the dissolution of the corporation by a suit of one of its members upon a proper showing therefor. The appointment of a receiver to wind up its affairs and distribute its assets. The provisions in the Revised Statutes of Illinois fairly illustrates, in many particulars, the needs of our own laws in this respect.

Fifth—It is believed that much of the work of the Supreme Court of this State is imposed by the appeals or writs of error in cases involving small amounts, and where no question is involved that has not already been passed upon and settled by the court of last resort in the State. Unless the trial court should certify that some new question not yet settled, or some constitutional question was raised in the case, it is believed it would be wise to so amend the right to appeal as to restrict it to cases involving $500 or upwards, except where the trial court certifies that some question is reserved for the decision of the Supreme Court.

Sixth—If the ancient fossil of a trial by jury in civil cases is to be maintained forever as a part of the jurisprudence of this country, we submit that the law of challenge of jurors for cause should be so amended as not to exclude fair and honest men, who will say upon oath they will hear and try the cause upon the law and evidence, even though they have heard the facts in the case and formed some opinion about it from what they have heard. A man willing to hear without prejudice, and to be convinced without favor to either side, should be a competent juror, even though he may have heard of the facts, known all the parties, and from what he has heard may have expressed himself about the subject matter.

There are many other things that might be suggested and perhaps ought to be submitted, but we will not inflict them upon you at this time.

On motion of W. A. Johnston the Committee on Amendments to the laws was instructed to present to the next Legislature the recommendations made in this report.

The Executive Council was, by resolution, directed to take such action as it may deem necessary to collect the delinquent dues and initiation fees.

ADJOURNED.

The addresses delivered before the Association, except the extemporaneous addressess of Judge L. D. Bailey and Judge S. O. Thacher, appear in the following pages. It is regretted that these were not reported at the time of their delivery, and thus preserved for publication.

C. J. BROWN, *Secretary.*

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POWERS AND DUTIES OF THE JUDICIARY.

JOHN GUTHRIE.

GENTLEMEN OF THE BAR ASSOCIATION:—The constitution of Massachusetts declares that "In the Government of the Commonwealth, the Legislative department shall never exercise the Executive and Judicial powers, or either of them; the Executive shall never exercise the Legislative and Judicial powers, or either of them; the Judicial shall never exercise the Legislative and Executive powers, or either of them; to the end that it may be governed by law and not men." Alexander Hamilton held that "The accumulation of all powers, Legislative, Executive and Judicial in the hands, whether of one, or few or many; and whether hereditary, self-appointed or elected, may justly be pronounced the very definition of tyrany."

The government of this State is vested in the Executive, Legislative and Judicial departments, and these departments are independent of each other in their powers and attributes, and the duties and obligations of each of them are clearly defined in the constitution, and neither of them can rightfully obtrude itself upon the province of the other, or usurp functions or prerogatives not delegated to, or vested in it; and yet, while each of these departments possesses and maintains separate powers and attributes, they are nevertheless, dependent on each other for their separate existence. The Legislature may pass laws, but it can not execute or expound them. It is the province of the Governor to execute, but he cannot make laws. The Judiciary must expound and apply the laws to particular individual suitors, but can neither make nor execute them. The Legislature holds the initial in almost all public affairs. The Governor cannot execute, nor the Judiciary expound a law until the Legislature has acted. The Legislature must first, therefore, in the exercise of its prerogative, pass on the meaning of the constitution, and the extent of the powers of the Legislative department.

The decision of the Legislature in regard to its duties and powers, must be regarded as *prima facie* correct, and must stand, and the Executive must obey and enforce it until the Judiciary shall pronounce it wrong, and the statute a nullity. Though it be a new departure in the science of government, it remains for the Judiciary to expound the constitution and laws of the State, and to define and mark the powers, boundaries, functions and attributes of the co-equal departments of the government. The courts of Great Britain do not, nor ever did, possess this high governmental attribute. The British Government has no written constitution, but the constitution of the government consists in

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tradition, usage and acts of Parliament, and the powers of the Legislature are not limited, and the constitution is, in effect, what Parliament may at the time pronounce it to be. It is not possible, therefore, that a question should arise in the courts of Great Britain, whether, in the passage of any statute, Parliament has exceeded its powers. In our State, as in other States of the Union, the jurisdiction of the courts plainly results from our written constitution, or, organic law, as it is sometimes termed. The government of Great Britain is Parliament, consisting of King, Lords and Commons. The Parliament is in fact, supreme, and when we talk or read of the constitutional rights of the British subject, we mean such rights as Parliament has conferred, or, has suffered him to enjoy. And, the same body that bestows may take away. Parliament deposed one King, and established a military rule under the name of the Protectorate; declared that another King had abdicated; and presented the crown, under many restrictions to a successor. Parliament might abolish *magna charta*, or the writ of habeas corpus; it might take at its own pleasure and its own will the estate of any of its subjects, or any class of subjects, and divide such estates among such others as it might choose; it is, as far as human government can be, omnipotent. That it has not exercised its full power; that it is bound by tradition and ancient law; that it represents and acts for the people, and not against them and their interests; that it is in a true sense conservative and not destructive, I do not here deny. I am not speaking of what may probably, but what may possibly happen. But such is not the theory or practice of the Federal, or State governments of this country. The powers to be exercised are granted and vested in the three departments of government by a written constitution. Neither Congress with or without the assent of the Executive, nor the State Legislature with or without assent of the Governor, can abolish or abrogate the bill of rights, or suspend the writ of habeas corpus, unless the public safety requires it in case of invasion or rebellion. No *expost facto* law or bill of attainder can be passed by Congress or the Legislature. Neither Congress nor the State Legislature can pass any law impairing a contract or a private right; neither can levy any tax, nor authorize any political subdivision to levy a tax, unless the power to do so is vested by the constitution in the Legislature; and, when an act is passed which exceeds the powers vested in the Legislature, it then becomes the duty of the courts to expound the constitution and the act of the Legislature, and if the courts conclude that the Legislature has exceeded the powers vested in it by the constitution they must so declare, and this determination binds the Executive and Legislature. The Executive department of this State consists of a Governor, Lieutenant Governor, Secretary of State, Auditor, Treasurer, Attorney General and Superintendent of Public Instruction. The Legislative power of the State is vested in a House of Representatives and Senate, and the Judicial power of the State is vested in a Supreme Court, District Courts, etc. The several persons chosen to fill these respective offices of trust, are required by the constitution before entering upon their respective duties, to take and

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subscribe an oath or affirmation to support the constitution of the United States, and the constitution of this State, and faithfully discharge the duties of their respective offices. I may be pardoned if I should observe here that in the early history of the government of the United States, there was a difference of opinion among public men in respect to the interpretation of the Federal constitution. The contest then was:

First—Does the function of interpreting or construing the constitution in a final and authoritative manner reside in the United States, as a body politic, or in the separate States?

Second—Does it reside in all the departments of government or in some one of them?

These inquiries are distinct and neither involves the other. If the government of the United States is by the people as one self-existing political society, then the function of interpreting and construing the constitution in a final and authorative manner resides in the general government as a body politic and not in the separate States.

The march of historical events during the last thirty years abundantly settled the former question. Then, does the function of interpreting and construing the constitution in a final and authorative manner reside in all the departments of the government or in the Judicial department. Mr. Jefferson contended that each department of the government was the sole judge of the extent and character of its powers under the constitution; and, when President, he acted upon this theory in some instances, and he was its earnest advocate in his political writings. Afterward President Jackson reiterated the same theory and based much of his offical action upon it. It is probably true that the theory of these great statesmen was the result of education and environment or personal qualities. Mr. Jefferson was bittorly hostile to the National judiciary from the birth of the Union. He prefered a form of government more democratic than ours, and looked upon the check and balance contrived to restrain the action of the more immediate representatives of the people with no favor. General Jackson possessed an iron will and determination, and was unable to yield his own opinions to those of another. Hamilton, Jay, Marshall and Story were the leaders of the other school of thought. They contended that the Union was not merely a union of States, but a government by the people to form a more perfect Union, establish justice, increase domestic tranquility, provide for the common defense, promote the general welfare and secure the blessings of liberty to themselves and their posterity; and that the judiciary department was invested with power to expound the constitution and define the duties and obligations of suitors and all persons entrusted with public duties.

I shall be pardoned for this digression if these historical facts and the theory and contention of these great statesmen and jurists shed light upon the constitution of this State, and better enable us to understand the powers, duties and obligations of those entrusted with public duties in the three departments of our State. It is only necessary for us

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to examine the two cases arising in our own court, one affecting the prerogative of the Legislature, and the other the tenure of the office of the Executive, to illustrate the powers vested in the Judicial department to ultimately expound the constitution as affecting the other departments of the State government.

The constitution of this State provides that the House of Representatives shall never exceed one hundred and twenty-five members. In 1879 there were one hundred and twenty-nine members admitted to seats, being four more members than were permitted by the constitution. The members from Rooks, Rush, Harper and Kingman counties were not under the constitution and laws, entitled to seats in the House of Representatives. An act was passed that year by the Legislature making an appropriation for a specific purpose, but only with the assistance of these four members. If these votes should be counted the act received the constitutional number of votes required to become a law. The attorney-general brought an action to enjoin the state treasurer from paying a certain warrant drawn by authority of this act. It must be remembered that our constitution provides that "each house shall establish its own rules and shall be judge of the election, returns, and qualifications of its own members." The House of Representatives gave its construction to the constitution when it admitted the members from these four counties, but when this action was brought before the courts it became the duty of the judiciary under the grant of power vested in that department to expound the constitution and define its limitations on the legislative department; and in the performance of its undoubted duty, the Supreme Court held that this act had not become a law within the meaning of the constitution. State ex rel. vs. Francis. 26 Kans. 725.

In 1859, and before the State had been admitted by Congress into the Union, State officers and members of the Legislature were chosen under the State constitution. The State was admitted January 29th, 1861, and the State officers chosen in 1859 entered upon the duties of their offices. There was no provision in the constitution fixing a time for choosing a successor of Charles Robinson the first Governor. The Legislature met in the early part of 1861, and passed an act fixing a time for the election of Governor Robinson's successor at the general election to be held in November, 1862. The friends of Geo. A. Crawford contended that Robinson's successor should be elected under the constitution at the general election of 1861. Crawford was voted for for governor at the general election of 1861, and applied to the Supreme Court for the writ of mandamus to compel the State board of canvassers to canvass the votes for governor and issue to him a certificate of his election. The power and duty of the court was invoked to expound and construe the constitution and the act of the Legislature, and the parties interested in the executive office must be bound by the determination of that court. The opinion of the court was delivered by the first chief justice, our distinguished guest on this occasion. The court in pursuance of the power vested in it and its duty under the constitution decid-

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ed that no election could be held for governor in this State at the general election of 1861, and that the successor of the first governor should be elected at the general election of 1862. State ex rel. Crawford, vs. Robinson, 1, Kans. 10. This judicial determination bound the executive and all his successors. No court in Great Britain or any of the continental countries is invested with such powers and prerogatives. In Great Britain, should a controversy arise as to who was elected to the crown, parliament would decide, and from its judgment there would be no appeal except an appeal to revolutionary methods. Time forbids the examination of other similar actions arising under our constitution.

The powers and prerogatives vested by the Constitution in the three co-equal departments of the State government are balanced to secure the highest and best results to the people of the State, and should never be disturbed or changed. The power of the courts, to hold in actions between parties, that legislative enactments are unconstitutional and refuse to enforce them is one of the most peculiar and distinctive practices of our American jurisprudence and political system. By it the Judiciary is elevated to the most important factor, indeed, in the country. The great frequency of its application, the extent of its effects in any view, and the final decisive power so commonly claimed for it render it so great a feature in our system, that no time spent in its study and investigation can be wasted. Whatever its origin it is undoubtedly a new departure in governmental science. To enable the courts of this State to perform the governmental functions vested in them and discharge the great trust imposed by the Constitution, the Constitution needs modification, or some change, to meet the wants and condition of the people. The jurisdiction of the courts is ample, and may not be extended, but must never be limited so long as the people of the State are to enjoy the blessings of a written Constitution. When the State was admitted into the Union, January 29th, 1861, provision was made for a Supreme Court, consisting of one Chief Justice and two Associate Justices; the State was divided into five Judicial Districts, and provision was made for the creation of other Districts by the Legislature. The number of Justices of the Supreme Court has not been increased, although the Judicial Districts have been increased to thirty-five, and in many of these Districts the business of the courts has increased so rapidly that a speedy trial cannot be afforded suitors, and justice is practically denied to the citizen. And this just cause of complaint exists in both the trial and supreme courts. It is the theory of free government that every citizen shall be secure in his person, property and character, and if he suffers a wrong to either he shall have a speedy trial and ample redr ess but, until the judiciary article of the Constitution is changed to meet the wants and conditions of the people the remedy against existing evils cannot be secured. The last Legislature submitted to the electors of the State an amendment to our Constitution increasing the number of Justices of the Supreme Court to seven. This amendment will be voted for and against at the approaching general election held next November. If this amendment to the Constitution is adopted by the people it will

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amply relieve the Supreme Court, and secure to the suitors in that tribunal speedy determination of their causes. Every consideration of economy and justice should induce the people of the State to adopt this amendment to the Constitution. The Justices of the Supreme Court for many years have been over worked, and have perhaps tried and determined more cases than any like number of Justices should have been required to hear and dispose of, in the interest of public policy. No State can afford to deny justice to its citizens, and the environments should be such that when a controversy has been settled in the highest court of the State, that the action has been decided according to the law of the land, and, anything short of this is a public misfortune. This measure of justice cannot be secured so long as each of the three Justices of the Supreme Court is compelled to examine and decide about one hundred cases each year and perform the other duties imposed upon him by law. Measured by the experience of the other courts of final resort our Justices are doing more than double work. It is asking too much of human endurance to expect that the work thus done is satisfactory to those who perform it. The Legislature at its session of 1887, authorized the Executive to appoint three persons, citizens of this State, of high character for legal learning and personal worth, Commissioners of the Supreme Court and made it their duty under such rules and regulations as the Court might prescribe to assist the Court in the performance of its duties in the disposition of the numerous cases pending in the court. The Commissioners have been faithfully employed in the performance of these duties, and, notwithstanding the untiring labor on the part of the Justices and Commissioners, the docket of the court continues to increase in volume, and it now requires about two years after a petition in error is filed in the court before the case can be decided. While it is undoubtedly true that the commission has and is doing valuable service for the State, I think the Bar is agreed that the service of the persons would be of much more value to the State if they were clothed with the powers and attributes of Justices. The Constitution, however, limits the number of Justices to three, and the only possible remedy the Legislature could afford was the creation of the office of Court Commissioners. The population of the State is now sixteen or seventeen hundred thousand, and we have about nine thousand miles of railroad in this State, which, with our diversified pursuits and activities admonishes us that litigation must continue to increase rather than diminish, and that to meet the wants and conditions of the State there should never be less than seven Justices on the bench of the Supreme Court, and they should be gentlemen learned in the profession and distinguished for integrity and with sufficient courage of conviction to fearlessly expound the Constitution and interpret the laws enacted by the Legislature.

Pardon me for a few reflections respecting the constitution of the District and Probate Courts of the State. I may again remark that the Judicial power of the State is vested in a Supreme Court, District Courts, Probate Court, Justices of the Peace and such other courts inferior to the Supreme Court as may be provided by law. In some of

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the counties of this State it is impossible for a District Court as now constituted to discharge its duty to suitors with the care and deliberation that is due the administration of justice. It is true that the Legislature may create other courts inferior to the Supreme Court, but the constitution has vested the District Court with exclusive jurisdiction of classes of litigation that the Legislature cannot transfer to any other court, such as actions for divorce, all appeals from the Probate Courts and Justices of the Peace. It must follow from this that when the Legislature creates other courts inferior to the Supreme Court, such courts must be courts of limited jurisdiction. The bar in general agree that it is not competent for the Legislature to provide for the election of more than one judge for a District Court. If this be the proper construction of the constitution, it is most unfortunate. The constitutions of Nebraska and Colorado admit of a different construction. In Arapahoe County, Colorado, there are two judges sitting in the District Court. The Legislature has prescribed certain general rules for the disposal of the business of the courts; every Monday morning the two judges meet in the court room of the senior judge and divide the business for the week. Then the junior judge retires to an adjoining room and tries motions, demurrers and equity cases and the other judge remains and tries jury cases. Substantially this practice is followed in Lincoln and Omaha, Nebraska. In this State we can have no adequate relief under our present judiciary article of the constitution. It is my opinion that the constitution should be so amended that where the public business demands the services of two or more judges of equal rank and dignity the Legislature might provide for such service. In this connection I beg to call the attention of the bar to the probate system engrafted on our Judiciary article of the constitution. It is said that as a rule all the property of the State passes through the courts having the jurisdiction of estates and the care and custody of minors and wards once in thirty-three years. It is not meant by this that every piece and parcel of property so passes through the courts the first thirty-three years of the State's existence, or in any given time, but in the course of time an average of all the property will so pass through the courts each generation. The constitution fixes the jurisdiction of the Probate Court and it is perhaps not competent for the Legislature to deprive it of this trust until the constitution is modified or changed. The business of these courts is not conducted as courts of record, or, in that open, public manner that should attend the administration of justice; and yet there is no trust that should be administered with so much fidelity and integrity as the care and administration of the estates of deceased persons. To waste an estate acquired by the hard toil and frugality of a deceased person, and deprive his widow and orphan children of such estate shocks the sensibilities of every right thinking man. The law directs how executors, administrators and guardians shall be appointed and the manner of conducting and disposing of the assets of an estate; how the estate of a deceased person may be sold or mortgaged and for what purpose, by the authority and under the direction of the Probate Court,

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and what compensation may be paid executors, administrators, guardians and judges of the Probate Court for their services. There are of course honorable exceptions, where Probate judges conduct the business of these courts on that high plane contemplated by the laws of the State, but every lawyer knows that the restraints of the law thrown around this sacred trust are lightly regarded by many of those who administer the law. As a rule it frequently happens that incompetent and unscrupulous persons are appointed administrators and guardians of minors without regard to, or rather, in disregard of the rights of the persons beneficially interested. The lands of the deceased are frequently disposed of under the direction of the Probate Judge without consulting the limitations of the law, or the interest of widows and orphan children. In short, the administration of these trusts is a reproach to the State and an unpardonable wrong to the weak, helpless and desolate heirs of deceased persons.

I assume that it is agreed by the profession that the third article of the constitution of this State should be changed or amended, and that the judiciary article should be more flexible so as to meet the wants and conditions of the people. Whether this much needed reform is to be obtained through a constitutional convention, or by submitting an amendment to the judiciary article of the constitution to the electors of the State, is a debatable question. Some of my predecessors have favored a constitutional convention, but so far all such recommendations and efforts have been fruitless.

There are those in the State who are persuaded that there is no probability that the constitution of this State will be submitted to a constitutional convention for revision during the next generation of men, and that the profession cannot hope for any relief in this direction or by this method. The provisions of the constitution limiting the debt of the State to one million dollars, except for extraordinary purposes not necessary in time of peace, meets the approval of the people of this State, and the electors would hesitate to trust a convention with the safe guard that has heretofore saved the State from financial distress. The homestead exemption engrafted on our constitution is a feature of State policy that has the earnest and sincere approval of a large majority of the people. I think perhaps, that no other State in the Union has so effectually, completely and liberally hedged about the homestead as the fathers of our present constitution did at the birth of this State. The provision that one hundred and sixty acres of farm land, with all the improvements thereon, occupied by the owner and his family, should be exempt from forced sale under any process of law, and should not be alienated without the joint consent of husband and wife, when that relation exists, was wise and humane and was an advance in our civilization. They may have builded better than they knew, but the pioneers of this State are entitled to the lasting gratitude of our people. The people of this State are jealous of the many good qualities secured to them by our present constitution, and it seems to me that the profession must secure the needful change by amendment to the constitution. The homestead

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and the family, the church and the school house are types of the civilization in Kansas These are the shrines of the people of this Commonwealth and at these altars all kneel with reverence and veneration.

I need not speak of other provisions of the constitution that have the approval of a large number of earnest people in this State. The policy of our government in many respects is in advance of all the other States, and this policy is fixed in the constitution and meets the approval of the wisest statesmen and philanthropists. When we consider the environments the legal profession may well pause and consider whether they will wait for relief from a constitutional convention. The people may submit our constitution to a convention for revision, but it will not be without a persistent and determined struggle. It would be plausibly contended that we could scarcely expect a constitutional convention to give back to the people a new constitution with the present limitation on the State debt, or the homestead exemption unchanged or unmodified, or some household Gods unprofaned. There is now pending an amendment to the constitution to be voted for or against at the next general election, extending the biennial session of the legislature, from fifty to ninety days. It is believed by many that fifty days is not enough for a biennial session of the Legislature of this State, yet there was a meeting of representative citizens held in this city within a few weeks from every section of this State, which pronounced against the measure. These gentlemen, composing this representative body, were men of intelligence and integrity and as much interested in the welfare of the people of this State as any other class of citizens. Others may honestly differ with them, but I think it safe to assume that this same body of citizens would approve the constitutional amendment for the relief of the Judicial department of this State. They would concede that the one measure was necessary, while they believed the other to be useless and unnecessary. These gentlemen represent largely the thought and sentiment of the State, and I only speak of this incident as indicating public thought. But, be this as it may, it is not my purpose to contend for either method for the reorganization or reform in our judiciary system. I only venture to suggest some of the difficulties and environments that surround the problem to be solved in securing the end to be attained.

There is no department of the government that the people have so much interest in, as that entrusted with the administration of justice. Every statute, every administrative act, and every exercise of jurisdiction must be tested by and conform to the fundamental utterance of the people's will as expressed and defined in our constitution; hence, the bar and the bench are called upon to exercise a function unknown to other countries — that of pronouncing upon the validity of a statute by comparing it with the constitution and deciding as to the power of the Legislature to enact it. English courts are constantly compelled to construe and interpret, but they may not declare an act of parliament void for want of authority in that body. This new departure in the science of government is only vested in American courts, and plainly re-

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sults from the power vested by the people in the judiciary by a written constitution.

There is no branch of human government productive of so much good to the individual or the commonwealth as the judiciary. To this the oppressed fly for refuge, the wronged for justice; it lies at the foundation of our civilization. In the fabric of our constitution it is the grand "Doric column" founded by the people upon which rests their liberties. Without it, the world would be a chaotic mass of wrong unrequited, and wrong-doers would go unwhipp'd of justice.

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JUDICIAL REFORMS.

THOMAS EWING.

MR. PRESIDENT AND GENTLEMEN OF THE KANSAS STATE BAR ASSOCIATION; LADIES AND GENTLEMEN:—Thirty years ago I had the honor to be chosen by the people of Kansas Chief Justice of the Supreme Court of the then proposed State; and when, in the year following, after her long struggle and rude rebuffs, Kansas was admitted to be a State in the Union, I presided at the first term of the Supreme Court held near the spot where we are now assembled. How changed the scene! A splendid city rises now, with its temples, electric railways, flashing lights and elegant mansions, where then scarcely a graded street cut the primeval sward, or crushed the tendrils of the wild strawberries and the blue bells as they rode in wind and sunlight on the unbroken waves of the prairie.

During the first term and a half of the Supreme Court, when I was on the bench, and before I resigned to enter the army, we heard but one cause of great interest—that of the people on the relation of George A. Crawford *et al vs.* Charles Robinson *et al.* It involved the title to all the State offices. The decision, though disappointing to a large wing of the Republican party, greatly increased the respect of the people for the court, as it was contrary to the supposed personal preferences of a majority of the judges.

Of the first members of the Supreme Court all are living and here present—Samuel A. Kingman, Laurence D. Bailey and myself. Brothers, I greet you! I am rejoiced to see how few are the wrinkles time has written on your brows. If we had not been comparatively youngsters then we probably would not all be here to-night. But, of the Bar, nearly half will nevermore answer the call of the docket. Sam Stinson, the brightest and wittiest of all; Billy McDowell, Perry, Holman, Gamble, Helm, Ruggles, Carpenter, Parrott, Purkins, Havens—a majority of these were younger than either of us three, but they are all gone forever from the scenes of their forensic struggles.

There was Governor Shannon, too, who in his prime, as a pro-slavery partisan, lived through the political blizzard in Kansas, and then passed the long evening of his days here in the serene and successful practice of his profession. There, too, was Dan McCook, my partner and friend—God bless his patriotic and daring spirit!—who went to glory in the wild storm at Kenesaw. And there, too, was Ben Monroe, the equally noble and gallant Southron, who fell mortally wounded at Donelson, fighting for what he believed to be the right—both companions at the Bar—fast friends and bosom cronies until the war broke out, when they parted as enemies, never to meet again. Peace to their souls! And may the bitterness which armed against each other all the splendid

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youth of North and South disappear from their survivors in the proud recollections of their virtues and their valor, and in the beneficent results of the war to North and South alike.

As I look back at the bench and bar of that day, the Falstaffian figure of Judge Pettit rises in my memory, and with it the first line of Sol Miller's apostrophe:

"John Pettit! Mighty Demijohn!"

Appointed by Buchanan because of his hostility to Douglas and popular sovereignty, he filled the office of United States District Judge for about three years without grace or dignity, but with ability, fairness and absolute integrity. The free state cause having been practically won soon after his arrival in Kansas, he acted towards the free state men, who chiefly composed the bar of his circuit, much as you might imagine Dr. Sam. Johnson would have acted toward a bar of Scotch lawyers who took special pains to keep him stirred up. With all his savagery, he had a warm heart, a vigorous intellect and a sound understanding; and, though intensely worried by the triumph of his political enemies, he never soiled the ermine by an act of injustice or partisanship.

And how the State has changed! The Pilgrim Fathers, though tossed by rough seas and starved on barren shores, were not so rudely tried as were the pioneers of Kansas. When a rest came after the exhausting struggle to make her a free State, the seasons brought famine instead of plenty in their hands. A more feeble State in population and property, or a greater State in the splendid spirit and hardihood of her people, never knocked at the door of Congress for admission. With a population of but 107,000, impoverished by the long struggle against force and fraud, and by the total loss of crops by drouth, she set out on her career with empty barns and an empty treasury. The State officers were paid poor salaries and in scrip. As Chief Justice, I sold my State scrip at sixty cents on the dollar, so that my whole official income was $1,080 for the first year. We then thought the utmost limit of cultivable land was about the meridian of Fort Riley, and never dreamed of a day when the sun would look down from west of that line on boundless wheat fields, harvested by steam, and on millions of cattle fattening to feed the world; nor of a day when Kansas, instead of being least of her sisters, should stand as she does now, with 1,750,000 people, the thirteenth in power of the forty-two States of the Union.

There is a longing in the human heart, akin to that for immortal life, to have our names live after us associated with illustrious or benignant events. I think all of us who fought for freedom in Kansas, and who followed up the fight through the war for the Union, may feel this longing fully satisfied. It was the sling of the stripling Kansas which slew the Goliath slavery. Few men have ever had the chance to serve mankind so signally as those of us who wrested this splendid region from the haughty and reckless Southern propaganda; and then formed the right wing of that glorious army which swept both rebellion and slavery from the land forever.

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I visit the State of my early manhood now with a heart full of gratitude to Almighty God for all the good of which he made her poor, gallant and struggling sons the instruments—for sending them here when the Missouri compromise was broken by the South, to meet force with force and give blow for blow—for arousing North and South alike to the fact that the conflict on this outpost was the deadly struggle of two hostile and irreconcilable civilizations—and for leading the antagonists on to the settlement by the sword which alone could make the Union free, fraternal and perpetual.

A new republic was born of the war. Almost all great and sudden evolutions are painful and destructive. Old institutions generally perish under blows, at the sacrifice of their hapless and often blameless upholders. Not only secession and slavery, but also the infinitely mischievous idea of the ignobility of labor, perished by the war. The youth who fought in both armies and survived came out of them brighter and broader men for their trials—especially in the West where the service was most strenuous and the play of individual character most ample. All the latent powers and faculties of the people were called into action, and when the struggle ended the impetuous currents of war turned into the channels of business and swept away old impediments which custom and prejudice had set for boundaries. In spite of the infinite losses of life and health by the war; in spite of the demoralization of labor and industry throughout the South during the long period of reconstruction; in spite of the enormous burdens of public debt ingeniously doubled through contraction of the currency, the last two decades have witnessed a greater development of American civilization and industry than was ever known in any equal period of our history. The people have thus been lifted up to recognize their own powers, the infinite resources of their country and its mission as the torch bearer of freedom and civilization for the world.

There are two radical changes in the judicial system of our States to which I ask the attention of the people and the Bar of Kansas. I say the people and the Bar, because the reforms I recommend are such as to greatly affect the general public and such as can be settled in the light of common experience by the people at large, from whom at last proceed all great reforms. I know how difficult it is to induce lawyers to change judicial methods and usages which have been handed down unquestioned for centuries, and that to try to change them seems as futile as trying to "beguile nature of her custom." But I know, too, that in addressing the Bar and the people of Kansas I speak to men who are wont to reason about things, and are willing to apply to any custom however venerable that touchstone which is the guide to progress.

The first proposition of reform is that in civil actions, after a jury has retired and failed to reach a unanimous verdict, for a fixed period of say four hours, three-fourths, two-thirds or a majority of the jurors may then render the verdict.

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Trial by jury in civil actions is one of the guarantees of liberty in the Constitution of the United States, and in the Constitutions of most of the States. The provision of the Federal Constitution is: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." This provision is confined in its operation to causes tried in the federal courts. The States are free to amend or abolish the jury system in civil cases in their own courts.

I hope no one will suppose that I lack appreciation of the trial by jury or wish to see it supplanted. On the contrary, I regard the jury as not only the best means for trying issues of fact between man and man, but as one of the forces of our civilization, which we can only afford to amend if we are sure thereby to increase its efficiency and promote its preservation.

The requirement of unanimity in civil cases is, I think, unsustained by either reason or experience. In criminal cases it is a just and necessary safeguard of liberty. The brand of crime carries with it civil and social death, and it should never be fixed on the brow of a man until his guilt has been absolutely proved. The presumption is the accused is innocent, and to rebut it the proof of his guilt should exclude all reasonable doubt, not only in the minds of the majority, but of each and every one of the jurors. But there is no presumption in a civil action that the plaintiff is wrong. Our experience, I think, teaches that he is oftener right than wrong. The average plaintiff does not incur the annoyance, trouble and expense involved in a litigation unless he believes he has been wronged, and is advised by counsel that he is entitled to relief. Then why should he be handicapped by requiring him to convince each one of the twelve jurors that he is right? In arbitrations, which are provided for in our laws as a substitute for jury trials, only a majority of the arbitrators need concur in an award. If the jury should be unanimous, why should not the arbitrators be? There is no other tribunal composed of several persons, whose action is hampered by this requirement. Even in the trial of an impeachment, which is a *quasi* criminal proceeding, three-fourths or two-thirds of the Senators in Congress or in any State may convict. Congress, the State Legislatures, the Appellate Courts of the Republic and the States, all act by a majority or, in some special instances in legislative bodies, two-thirds or three-fourths.

There is in my opinion but one good result obtained by the requirement of unanimity, which is, that, in case of any doubt, it compels the jury to compare views instead of deciding without consideration *instanter*. But a provision that only a unanimous verdict will be received for, say, the first four hours after the case goes to the jury; and that, after the expiration of that time, a three-fourths or two-thirds or a majority verdict will be received, would just as effectually insure discussion and comparison of views and at the same time avoid the unjust verdicts, the mistrials, delays, expenses and innumerable hardships involved in the requirement of unanimity.

We search in vain the history of the jury system for any other

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reason for the requirement of unanimity. The Scandinavian nations had from their earliest history a trial by a body of twelve men, the verdict of a majority of whom was decisive. But these men were judges as well as jurors; they decided questions of law as well as of fact. The impracticability of obtaining twelve capable judges from the body of the people by lot, led to the gradual disuse and final abandonment of this so called jury system.

The jury in its present form is claimed to date from the reign of Henry II, in the twelfth century. But the so called jury of that day was no jury at all. It was a body of twelve witnesses by whose concurrent testimony as to the facts a litigation between individulas was decided. In other words, the concurrence of twelve witnesses as to the facts was the minimum proof then accepted to establish a civil cause. When the twelve witnesses first chosen could not agree, new men were added until twelve came to one conclusion and rendered the verdict—when the dissenters were generally fined as for contempt! It having proved inconvenient to thus water the jury, this practice was abandoned, and unanimity was thereafter required without adding to the jury. This made the jury of to-day; but the date of its creation is lost in the mist of England's early judicial history. It probably was two or three hundred years after the establishment of the jury of witnesses—about the fourteenth or fifteenth century.

When the present jury system was thus established, unanimity was obtained by fining the obstinate minority or by punishing the whole jury—as by driving them in open carts from one assize to another, or more recently, imprisoning them *sine cibo et aqua* until cold, hunger and thirst compelled the weak, or ill, or mean-spirited, to commit moral perjury by assenting to a verdict against their consciences. This enlightened and humane method we took blindfold from our savage ancestors, and still resort to it unquestioningly in the best courts of the States and the United States. Why a unanimous verdict thus obtained was better than a majority verdict, no one has attempted to tell since the preposterous system was inaugurated.

The evil effects of this requirement of unanimity are many and great. Where the verdict cannot in the nature of the case be a compromise, as in an action of ejectment or on a promissory note, mistrials occur from the corruption or dullness or crankiness of a small minority of the jury, resulting in delay, expense and trouble which sicken the heart of the suitor. In almost all other cases the verdict is a compromise forced by a small minority and accepted by a large majority as only better than a mistrial,—a compromise founded on no testimony or principle, and generally not representing the judgment of a single man on the jury. No intelligent people not enslaved by custom could accept and preserve an institution which so lamentably fails to perform its functions.

The growing discontent with the jury system, resulting almost wholly from this useless requirement, leads very frequently to the submission of jury cases to the court, and to arbitrations, and to assents to

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majority verdicts, by reason whereof the jury as known to the common law is gradually falling into disfavor, greatly to the public detriment.

The tendency to its disuse is increased by the change already made in the jurisprudence of about three-fourths of our States abolishing the distinctions between courts of law and equity. The jury alone stands in the way of the complete assimilation of legal and equitable procedures. As this most beneficent merger grows more and more acceptable to the profession, the tendency to disuse the jury becomes strengthened; and the day is not far distant when, if the absurd and injurious requirement of unanimity be adhered to, trial by jury in civil cases will be abandoned.

I think it a political duty of American patriots and statesmen to free the jury system of this defect, and thus insure its perpetuity. It is one of the vital forces of popular government. It educates the citizen in the law which declares civil rights and governs civil procedures. It dignifies each one in turn by having him sit as a minister of the law, hearing able and educated lawyers and judges discuss the cases; and calling into action his highest faculties of reason, experience and conscience in determining the facts and applying the law. It lifts him out of the dust and humdrum of every day business into a higher realm of thought and conscience, where divine principles of justice are applied by the courts to the protection of the liberty and the property of the people. No institution of government is better worth strengthening and perpetuating, for none is more powerful for the public good. It offends me to hear it spoken of often, if not generally, in a tone of contempt arising chiefly, I am sure, from the delays and failures incident to the requirement of unanimity which we have accepted from the hands of semi-savages of many centuries ago—from men whose highest conception of the administration of justice was satisfied with the trial by twelve witnesses; or trial by combat in which the man who could kill his adversary won the suit; or a trial by compurgators in which the result was determed by the mere number of men who would swear they believed either party was right; or a trial by horsned in which the guilt of the accused was determined by the test whether, after making solemn oath of his innocence, he could swallow a chunk of dry bread without choking. From these enlightened law-givers we derive, not the jury system, which existed in embryo in Rome and in most countries of Europe throughout the Middle Ages, but this irrational and injurious provision of unanimity.

This requirement illustrates how a custom once established lives on for ages after the reason which established it is past and forgotten In a great paved court leading to one of the fronts of the old winter palace in St. Petersburg, a solitary sentinel treads a beat of about one hundred yards, relieved every few hours. Generations of Russian sentinels have marched there, back and forth, day and night, through storm and sunshine, with nothing to guard, nothing to do. No one knows or has known for two centuries why the sentinel is posted there. A recent antiquarian search in the archives of the War Department dis-

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closed the fact that early in the last century Queen Catherine I, wife of Peter the Great, had a flower bed there, and caused a sentinel to be posted to guard her tulips! So, the requirement of unanimity, a belated relic of a forgotten and barbaric form of trial by witnesses, became incorporated, without a reason to support it, in the English system of jury trials in civil cases, and has been handed down from generation to generation as though it were one of the precious jewels of our race. If it were merely useless, we might excuse our weakness in preserving it; but, as it is also hurtful and tends to weaken the respect of the people for the jury system, it ought to be abolished.

Another mooted reform to which I ask the favorable consideration of the Bar and the people of Kansas, is the adoption of a civil code; that is, a code in which shall be embodied in plain language and orderly arrangement all those general rules of law which are commonly known in treatises as "the private law."

Since the adoption of the codes of civil and criminal procedure, and of crimes and punishments, we may say as to the States of the Union generally that all their public law is in their statute books. The public law covers all the machinery of government, state and national, and the modes of conducting business in public tribunals or by public officers. All this public law is consistent, accessible; and every citizen is charged with constructive knowledge of it.

But the other large body of the law, the private law, which controls the property, business and relations of men, is scattered, discordant and largely unknown to the people.

Our government is based on the theory that all law, public and private alike, is an expression of the collective will of the people. The private law and public law alike, therefore, should if possible be in the statute books, published and accessible to all.

But we built our government on an inherited civilization, and took with it a jurisprudence, the outgrowth of monarchial and aristocratic institutions. A natural respect for our ancestors, and the pressure of great political problems, led us to transplant this jurisprudence here with almost all its idiosyncracies, resulting from the influence of alien institutions and the conditions and events of centuries gone by; and, until about the middle of this century, we reverently cherished them, good and bad, as though they were all of the very warp and woof of our civilization and our liberties.

But about forty years ago an agitation for judicial reform arose in New York, and under its influence one after another of the most objectionable features of our inherited system of jurisprudence was changed to meet the free and advancing thought and spirit of our people. The distressingly burdensome double system of courts of law and equity was abolished, and all the courts united into one; the common law system of pleading, with its fifty-nine forms of declaration, and its special pleas, replications, rejoinders, rebutters, surrebutters, general counts

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and general issues, was swept away, and one plain form of action and defence substituted for the ingenious and subtle devices of centuries. The criminal pleadings and procedures of the common law were supplanted by simpler and plainer procedures, a complete code of all crimes and misdemeanors and their punishments was adopted, abolishing all mere common law offences which lurked in the dust of forgotten precedents to spring out and sting the unwary, and now all this body of public law; instead of being hidden away in black letter statutes and scattered and contradictory decisions, is in plain print and orderly arrangement in the State Statutes, where every lawyer, judge and citizen can see it on a moment's notice.

Although these great and radical changes met with the stern opposition of a large majority of the bench and bar of America, their wisdom has already been fully established by their adoption in three-fourths of the States and Territories of the Union; and finally in Great Britain itself, where, in 1873, Parliament passed an act combining the Queen's Bench, the Exchequer, the Court of Chancery, and the Courts of Admiralty, of Probate, of Divorce, and of Bankruptcy in one tribunal, called the Supreme Court; abolishing all distinctions between law and equity jurisprudence, and establishing but one form of action in the administration of justice between private suitors.

These great reforms, including the codification of all the law which can by any construction be called public law, being on the way to complete adoption in all the States, we are brought face to face with the question whether all the remainder of the law—the private law—that which most nearly affects each citizen, which governs his business and personal relations to his family and his fellow man, should not also be codified.

Where is this private law to be found? Part of it is already in the Constitution of the United States; part in the Constitutions and Statutes of the States severally. So far, that is publication enough. But, unfortunately, at least three-fourths of it is still buried in ancient English statutes, extending from the Norman Conquest to the reign of James II —in English, Irish and Scotch decisions, old and new,—in decisions of the Supreme Court of the United States, the nine Circuit Courts, and the fifty or sixty District Courts—in decisions of forty-two Supreme Courts of the several States, and the thousand Inferior Courts of the States—decisions which are as the sands of the sea for multitude, and are increasing at the rate of thousands of volumes and hundreds of thousands of cases a year; decisions, all of which were never assembled in one library or seen by one man—scattered, inaccessible, unsearchable.

In an address before the State Bar Association of Virginia, delivered last year, entitled "The Provinces of the Written and Unwritten Law," Mr. James C. Carter, one of the most eminent lawyers of New York, presented an elaborate and able argument against codifying the private law. He says that all public law should be written in the statute books, and all private law should be left unwritten, so that, as he says, the judge may apply perfect justice to the circumstances of each case as it arises—because "the fact must always come before the law."

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This argument, I think, is purely fanciful. Of any one hundred questions of private law arising in litigations here in Kansas, perhaps twenty have been settled by express provisions of existing statutes. Another twenty, perhaps, involve questions of general private law which have been in effect decided by the Supreme Court of Kansas. Another twenty would, perhaps, be found on examination to be settled by a great preponderance of authority of courts outside of Kansas. The remaining forty, however, would be found to be cases (except a very few presenting new and undecided questions) in which the decisions conflict, and a large weight of reason and authority is found on both sides. In these doubtful cases, who shall weigh the authorities by numbers, when not half of them are to be found in the state library, and not one-fifth of them in all the lawyers' offices of any town in Kansas? Who shall weigh them by reason, when the questions may be of mere arbitrary law? Who shall weigh them by conscience, when they may present no conflict solvable by the moral sense?

Now, so far as the general principles of private law are settled beyond doubt in adjudged cases, there certainly can be no insuperable difficulty in stating and arranging them in plain language in a well-systematized code. So far as such principles are not settled in Kansas, because of contradictory decisions here or elsewhere or because the principles have never been declared at all, a body of code commissioners, who are able lawyers, could give each of such questions a more thorough and satisfactory examination in the light of reason and authority than can an overworked judge on the circuit, where he cannot consult the authorities, or at the State Capitol where a necessarily limited study of contradictory decisions often adds to the perplexities instead of solving them. Such commissioners would incorporate in a proposed code what they believed to be the best settlement of such disputed and doubtful questions. The code would, before adoption, undergo inspection and criticism of the Bench and Bar of the State, so that when enacted it would be a comprehensive and clear declaration of all the private law, leaving no known question unsettled. The volume containing such a code would not be larger than this volume of about 700 pages in large type; that is, it would be not much more voluminous than the code of civil and criminal procedure. This volume is the civil code prepared many years ago in New York, pursuant to a requirement of the Constitution of that State—a code twice passed by the legislature, twice vetoed by the governor, and still under consideration at Albany. It comes from the hand of David Dudley Field, the father of both American and British law reform. Eminent as a lawyer, pre-eminent as a publicist, he has done more for British and American law reform than any other man of the nineteenth century.

The private law is necessarily progressive. It must advance with advancing civilization forever. Men and their recognized relations and obligations to their fellows are incessantly changing by the silent power of the Divine law of evolution which constantly raises them to higher ideas of right. The law governing our personal relations and our businesses must be constantly modified to conform to the requirements of

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improving moral perceptions. Besides, new applications of physical forces, new enterprises, new business relations, call for new principles and new applications of law adapted to ever changing exigencies.

Mr. Carter maintains that, if the private law were codified, these necessary changes would stop, and that, anyhow, all but very radical improvements can best be made by the judges. I think not. The legislature makes but few amendments of the private law now only because it is uncodified: and for that body to make amendments without the entire law of the whole subject being before it would be like altering an intricate machine without seeing the relations of the part altered to the other parts. If the private law were codified, the legislature could make changes intelligently, and without injury to litigants. At present, the courts amend the private law, but every change is at the cost of a suitor who has perhaps risked his fortune on the assumption that the existing law would be applied. Jeremy Bentham said in England a hundred years ago: "It is the judges that make the common law. Do you know how they make it? Just as a man makes law for his dog. When your dog does a thing you want to break him of, you wait until he does it again and then you beat him; and this is the way the judges make the law for you and me."

Mr. Carter, in the lecture I have referred to, intimates that to incorporate the private laws in statutes would be inconsistent with the principles or traditions of free government. If by free government he means popular government, I say that the reduction of all law to writing is a logical result of government by the people.

Unlike the British monarchy, our republic was founded on a written constitution in which the people gave the new government each power it was authorized to exercise, and withheld all others. Every authority of that government; every duty it imposes; every act it prohibits, is written down. So the people of each State defined the powers of its government and distributed them among its several departments. The power given the judiciary is to declare and enforce the law, not to make or modify it. So far as a court changes the law, it usurps power. Judicial legislation is sanctioned by the British constitution which is but a general assortment of historic precedents, but is utterly repugnant to our constitutions, State and National. Hence, the argument of Mr. Carter that the private law should not be put in the statute books because that would prevent judicial legislation, might perhaps be good if addressed to British lawyers, but is certainly bad addressed to an American Bar. It involves him in the dilemma that our State constitutions should be forthwith amended so as to confer this special legislative power on the judges; or that the judges should continue to exercise these powers in disregard of the constitutions they are sworn to obey.

The advantages of codification of the private law are great and obvious. It will bring this most important and least understood body of the law within reach of everybody, to be consulted, discussed and studied by all who have any interest or duty affected by it. The minister

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of the law everywhere, the judge, the magistrate, the lawyer, would have the law within his reach, and on most questions could decide or advise with confidence and comparative certainty upon it. The law would thus be brought down to the people, and largely to popular understanding. Of course, there will often be doubt and misinterpretation and mistakes such as occur in the interpretation of the public laws, but only those which necessarily spring from defect of expression in forming the code, or of judgment in interpreting it. The ambiguities, obscurities and other defects of expression in the code would soon be cured by interpretation of the courts; and in a few years its meaning would be quite fully understood, and its latent defects and omissions cured by legislative amendment.

Mr. Carter says that his opposition to codifying the private law is confirmed by the observation that, in the natural growth of the law of a nation, its public law is written and its private law unwritten—"left to be shaped by its judicial tribunals." I think this is a grave error of fact, and that the tendency of American jurisprudence is clearly and strongly towards codifying all the law. In addition to the comparatively recent enactments of the codes I have mentioned—covering, as they do, large tracts of the law heretofore unwritten—a glance at the statute books of the several states will satisfy almost any lawyer that the decided tendency is to a codification of the private law.

Take the revised statutes of New York, for example, and in the domain of private law we find:

First. The absolute rights—the liberties—of the people defined or recognized in the constitution.

Second. We find, too, one of the grand divisions of private law, that relating to real property, minutely, clearly and elaborately set forth in a code of eighty pages which is almost a complete substitute for that vast wilderness of learning known as the common law of real property.

If there were a title of the common law which a modern codifier, with a decent respect for the early fathers; should have left unchanged, it was this masterpiece of subtle refinements of the schoolmen—those intellectual revellers in entities and quiddities—whose delight it was to

> "—distinguish and divide
> A hair 'twixt south and south-west side."

But sixty-five years ago three able lawyers—two very young, and one near middle life—Benj. F. Butler, afterwards Attorney General under Jackson; John C. Spencer, afterwards Secretary of War under Tyler; and John Duer, afterwards Chief Justice of the Superior Court of New York City—were made a commission to *compile*, not codify, the laws of the state. To the horror of the older lawyers, but with the applause of the people, they irreverently swept away the whole pile of learned rubbish—the rule in Shelly's case, and all the stuff that had no sound and living reason to support it—and reported a code which the legislature enacted, and which has since become in effect the American code of real property.

Turning to other parts of the Revised Statutes of New York, we

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find the private law to a considerable extent codified in chapters covering the law of marriage, divorce, rights and liabilities of husband and wife, parent and child, master and servant, apprentices, partnership, interest, notes and bills, chattel mortgages, assignments, property of idiots, lunatics, etc.

And turning to the private law relating to artificial persons, we find that, instead of prescribing only in general terms the mode of creating private corporations, their general powers and the manner of perpetuating and dissolving them, leaving all else to remain as it lies in the unwritten law, the legislature has prescribed an elaborate code of over 600 pages, covering more than one-fifth of the whole body of the Revised Statutes.

We find, too, that Massachusetts has codified the private law as fully as has New York, and Georgia still more fully, while California and North and South Dakota have severally adopted the complete civil code now pending before the New York legislature.

So far, then, from the tendency of our jurisprudence being toward leaving the private law unwritten, it is all the other way. In codifying it we will only be doing what, it seems to me, common sense dictates—that everyone should have the best attainable means of knowing what are his private rights and duties as recognized and enforced by the State; what patriotism dictates—that the changes made in such rights and duties necessary in the progress of civilization shall be made by the agency designated by the people to make the laws; what the experience of mankind dictates—the reasons for codification being similar and almost as cogent to-day as when 1,350 years ago the Emperor Justinian proclaimed that code of private law which lighted all central and northern Europe from barbarism to civilization.

The Roman and the English systems of jurisprudence are the only ones of which we have a full history from their rudest beginnings to their completest development. The parallelism in their growth is striking. In the infancy of each, justice was subordinated to form—a limited number of forms of action were prescribed, and the subtlety of the lawyers and judges was exerted oftener in defeating than in establishing a just cause. As the nations advanced in civilization, a better conception of the objects of courts prevailed and the judges added new forms of action, and grew more liberal in furthering each just cause. Finally, the prætors of the Roman, and the judges and chancellors of the English judiciary, disregarding barbaric forms and precedents, boldly and avowedly legislated on each new question; and thus built up the systems of jurisprudence which illustrate, and largely created, the civilization of their peoples.

While the Roman law remained uncodified there was no uniformity of decisions in the various divisions of the Empire. Codification brought order out of chaos throughout its wide dominions. When the Empire fell, its jurisprudence, had it remained uncodified, would have fallen with it, a mass of shapeless ruins; but the code survived as a model for other nations, the most beneficent work of man in the domain of

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philosophy and government. One-third of Brackton's "English Law and Customs," the earliest commentary on the common law, written in the thirteenth century, was taken bodily from it; and a century ago Lord Mansfield created the British mercantile law by legislation from the Bench, which he adopted almost wholly from the codes of Justinian.

A like necessity which led to the codification of the Roman private law by Justinian has already forced the partial codification we have accomplished in America, and will in time, I am sure, lead to a complete codification of all our law. "When Justinian ascended the throne," says Gibbon, "the reformation of the Roman jurisprudence was an arduous but indispensable task. In the space of ten centuries, the infinite variety of laws and opinions had filled many thousands of volumes which no fortune could purchase and no capacity could digest." In a pamphlet published in 1866, the Lord Chief Justice of England said: "We seem to be making no progress whatever towards reducing to any intelligible shape the chaotic mass—common law, equity law, crown law, statute law, countless reports, countless statutes, interminable treatises—in which the law of England, by those who know where to look for it, and not always by them. is to be found."

The western States of our Union have a spirit of intellectual independence, and freedom from the servitude of custom, beyond their eastern sisters. They are equally with them inheritors of a genius for self-government. While New York has delayed and hesitated, three of the western States, California and the two Dakotas, have already adopted the Code of private law. I would be proud to see intrepid Kansas join the head of the column in conforming our entire system of American jurisprudence to the principle of popular government, and to the convenience and interest of the people—so that all our law shall be plain, consistent, and open, and so that every amendment shall be made by the legislature, and reflect the growing conscience and judgment of the people.

And now, my friends, I have only to thank you for your attention and bid you good night. It has given me great pleasure to revisit Kansas—the State of my early political, professional and married life; which honored me with its dignities; with a seat on its Supreme Bench, and with the still higher trust and authority to be captain over a thousand of the best and bravest of its sons in the glorious fight for the Union. Though separated from Kansas and its affairs by half a lifetime and half a continent, I have almost daily gone back in memory to its billowy and beautiful landscapes, and to my old friends and companions here; and, after this brief charming visit, I shall bid adieu to them again but with revived and strengthened affection. May God bless Kansas. May her heroic service for freedom and the Union be treasured as the proudest inheritance of her sons and her daughters forever. May length of days be in her right hand, and in her left hand riches and honor. May her ways be ways of pleasantness, and all her paths be Peace!

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S. A. KINGMAN.

This is a most interesting occasion, to me, as well as you. To you who are in the arena struggling for place, for leadership and for mastery in our chosen profession (you observe I use the words "our profession" although now but a hanger on to the skirts thereof), I say to you it must be interesting in its useful hints and wise suggestions. Naturally your thoughts are with the present and for the future. The pressing duties and inviting opportunities of the hour that is, and the anticipations and aspirations of the hours to come, command your attention.

To me the time is full of interest as it invites me to look backward. When the heat and glare of the mid-day and the brightness of the late afternoon is past there comes an after glow—fit time for memory. There is an after glow in life that comes as a consolation to old age, and also as a partial compensation.

The presence of our first Chief, whom I early learned to regard for his estimable personal qualities, and to respect for his great attainments, his eminent ability, and strong forceful character, naturally leads me to recall the time when my associations with him were so pleasant, for I look on my acquaintance with him as one of the great pleasures of my life, and I have always regarded his friendship as a benediction. If I do not say more or speak with more emphasis, it is because it may not be becoming in his presence, and not because I do not feel like it. The pleasure of greeting him once more is so great, that it half reconciles me, for the moment, to the great loss our State sustained when he deemed it to be his interest to cast his lot elsewhere.

I might with truth speak like kindly words of our worthy associate, Judge Bailey, but I forbear for you all know his worth, but can not know in what high esteem I hold him.

A court of last resort moves on so calmly and quietly, with so little friction that little public interest is usually awakened to its proceedings. Unlike a trial court where a case of importance invites public attention and attracts a large audience who speculate on the varying developments of the trial as it proceeds, take sides and rejoice at every successful point made, and become deeply absorbed as to what the result may be, and all this though no personal interest will be affected by the result. In the appellate court no one appears interested save the lawyers in the particular case, though the settlement of the principle involved in the question before the court may be of vital importance to every man within its jurisdiction. There are exceptions to this general rule, and perhaps the first case submitted to the Supreme Court is one. If the interest it excited was general it was a fictitious one. Its decision

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affected in no wise the morals, prosperity or property of the State, or any individual therein. No real interest was touched save that of the half dozen that might be affected thereby. Perhaps a glance at the condition of things at that time may not be without interest.

There was a quarrel between Lane and Robinson. Lane hated the Governor with an intense, active and ceaseless hatred. If any one thinks that Lane's sentiments were not heartily reciprocated by the Governor he hardly understands the disposition of that amiable gentleman. Lane had got what he had long set his heart on possessing—a seat in the United States Senate and the control of the immense federal patronage which the war had produced. This would have seemed enough, but Robinson was still Governor; "Mordecai was sitting in the Kings gate" and the Senator decided to oust him. Then in "the secret recesses of his own mind, capacious of such things," he found a way by an interpretation of the constitution in which, while every other clause of that instrument lay dormant and inoperative, the one limiting the terms of office was to have full play.

Upon that theory a ticket was put in the field and a canvass and election followed, and the head of the ticket, a most estimable gentlemen, brought his action with a view ultimately to oust the Governor.

Now as before observed society had no substantial interest in the settlement of the question involved. Nobody had conceived of a vacancy till the later part of October preceding the election. The Republican State Committee had over looked the fact till their attention was called to it in a petition in which was stated, if true, cause enough for impeaching the Governor, and but a bare assertion that a vacancy existed. Yet the great agitation that had been begun in October and kept up, had infected the whole community, and the most intense anxiety seemed to prevail.

To such an extent did this exist that the counsel for the relator, in view of outside rumors, felt called upon in his argument to disavow in behalf of his client any purpose to resort to any other than legal measures in case his application should be refused. A conclusive proof that the apparent interest in this case was largely manufactured and purely fictitious is found in the fact that all talk about it subsided at once, and no unfavorable criticism was made on the decision to my knowledge. Everybody seemed satisfied.

All this long talk has grown out of my purpose to state in this paper one curious fact. In passing upon the question the justices were virtually passing upon their own terms of office, but I can not remember that the matter was spoken of in consultation, nor can I recall that it occurred to my mind at the time. I have never known of the singular fact being adverted to in the way of criticism or otherwise since.

Indeed if the criticism had been made and had any force, it would not have applied to Justice Bailey, for curiously and suggestively enough no one was nominated or elected for his place, and he could have held his place till his successor was elected and qualified.

One more reminiscence and I have done.

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It is pleasant to know that one long a valued member of this Association and of our courts has been transferred to a tribunal with a wider jurisdiction and a more extended fame. It is still more satisfactory to know that he will worthily fill the exalted place, not only with credit to himself and added respectability to the court of which he is a member but will reflect honor on the State and institutions which trained him for the high place. It is gratifying to reflect that others equally well equipped still occupy the Bench and adorn the Bar of our State.

I well remember the first time Judge Brewer appeared in the Supreme Court. It was in the case of Harris vs. Harris, 5 K. Judge Brewer had been Judge of the First District Court and had decided the case himself. His term having expired he argued the case in the Supreme Court as counsel for the plaintiff in error. Standing there to complain of his own decison, he seemed to feel that the situation was somewhat awkward, and in half apology the Judge said he could not see why he should not complain of his own decision, as everybody else had done so. The record shows that the Court agreed in opinion with the advocate and over-ruled that of the Judge.

When an old man gets to talking of the past he is apt to become garrulous, and the best place to stop him is—just before he begins. I commend this truth to the Executive Council of the Association who will have in charge the preparation of the program for our next meeting.

I had intended to say something of the members of the Supreme Court and Commission, but as what I had to say was to represent the Court as the result of the doctrine of evolution and in the presence of the first chief, and with his voice still ringing in my ears, I can not. Whereby the Justices and Commissioners miss some very pleasant remarks.

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A. L. WILLIAMS.

"I take with awe the task assigned:
It may be that my friend might miss,
In his new sphere of heart and mind,
Some token from my hand in this."

GENTLEMEN: Whenever a friend dies, we all ask the question—which countless generations have asked before us, and to which the unresponding mystery gives back no answer,—"Is this the end?" And yet, whether death is indeed the end, as asserted by the philosophers, or the beginning, as believed by the Christian, it is neither philosophical nor religious to mourn over-much for those who die. For, if to die is to enter on a dreamless and eternal sleep, then are the dead at rest; and if death is but the dawn of an eternal and painless day, then are they blest indeed, and all our mourning is but a selfish sorrow at our loss and not theirs. And especially is this so when death, the slandered friend of man, brings release to one full of years and honors, and inflicted with an incurable malady. At the funeral services of the late Bishop Vail, Dr. McCabe, who knew and loved that great and good man, and believed that he had earned release, reminded his hearers that to mourn the death of such a man was almost to renounce their creed.

We see the workings of nature and proclaim them wise in all things save the one law of death for man. We know that she is neither kind nor pitiless; neither capricious nor fitful, but simply logical and inexorable. She smiles upon our greatest griefs and roars in wintry storms upon our holiest festival, and yet we know that for every seeming caprice there is a fixed law which she can no more evade than can the creatures she has fashioned. We love to see the bending grass, the blooming flower, and to inhale the sweet-scented air of spring, untroubled by the thought that when the chilly blasts of winter come, the grass will wither and the flowers decay, for we know that they will wave and bloom again in their old forms, or by the subtile chemistry of nature be changed into some new shape of life and beauty to gladden and enrich the world. If, then, such loving care is bestowed upon beast and bird and grass and tree and flower, may we not believe that for the noblest of her creatures Nature has equal care? May we not, holding with Pascal that this "life is a vale between the peaks of two eternities," believe that when our dead penetrate the mystery that hangs behind man's creeds and dogmas, they enter on a new life, with new activities and new duties? This is the consolation and the faith of most, the hope of all who live; and holding fast this faith, I will proceed to a brief sketch of the life and character of the emancipated Nestor of our Bar.

John Palmer Usher was born in the town of Brookfield, Madison

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county, New York, on the 19th day of January, 1816, and was in his seventy-fourth year when he died, in Philadelphia, on the 13th day of April, 1889.

I do not know what his early educational advantages were, but presume from some things I have heard him say, that he received only such training as the ordinary schools of that day afforded. He taught school in his native county for a while, but used all his spare time in the diligent study of law, and on the 17th day of January, 1839, was admitted to the Court of Chancery of New York, by Chancellor Walworth, and on the next day was admitted to the Supreme Court of that State.

In the latter part of 1839 he removed to Terre Haute, Indiana, making the journey in a buggy. From a professional standpoint, it was a very lucky time. The State of Indiana was then more of a wilderness than Kansas was in Territorial days. Admitted to the Union in 1816, a steady stream of population set in from the Eastern States; about 1830, all forms of speculation were extravagantly engaged in; the Legislature granted charters to eight different lines of railroads, and was about to engage in the building of the largest canal then known in the world. Public land sales were enormous; values were inflated, and the State was passing through what has since been known as a "boom." In 1837, the natural reaction set in, and the State was involved in what seemed a hopeless bankruptcy. When Judge Usher arrived there the depressed condition of affairs still existed. The State was hopelessly in debt, and so were her citizens. Values had shrunk to almost nothing. None of the projected railroad lines had been completed. The canal seemed to be a flat failure, and the result was—universal litigation. No finer field could have been chosen by a young man for the beginning of his professional career; for it is a fact, whether we like to admit it or not, that depressed times contribute largely to the volume of litigation.

Life on the frontier at that time was very peculiar. The notable events of the year were the county court, political barbecues, horse races, and the land sales. All of them were attended by almost the entire population of the county. The only money in circulation was that brought to the land sales by money lenders, who carried it in saddle-bags, to lend to the people to pay for the pre-emption of their land, taking as a matter of course, security upon the land at cut-throat interest. The money thus paid at once went into the coffers of Uncle Sam, and consequently was not circulated among the people. In lieu of money, there was universal barter. At these land sales, horse races, card playing and whisky drinking were a part of the regular amusement. There was very little business of any kind to be transacted, and the only sources of litigation were the attempts of the creditors to collect their money, and neighborhood quarrels over division fences, boundary lines, or the title to some stray animal. The latter class of cases, of course, was fought on what is called "principle," and it was universal to find one-half of the county arrayed as witnesses on one side, and the other half on the other. For fees, of course the lawyers had to take personal property, town lots, interests in farms, and anything but cash. The only cash clients were the creditor

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class who had loaned money for the purpose of pre-empting lands. Like all money lenders, this class of clients demanded the greatest amount of service for the smallest amount of money. The necessary consequence was that they procured as attorneys men whose actual stupidity was compensated by their look of wisdom—a class, by the way, not entirely extinct in this day. The result was that all the really bright lawyers were engaged by the debtors to fight their battles; and as their only hope was in delay, the efforts of their attorneys were directed in every instance to procure delay. In fact, this was so in all kinds of litigation. None but creditors desired immediate action. The litigants in neighborhood quarrels enjoyed the perpetual wrangling, and liked to attend court and hear their lawyers "plead," as they called it; besides, to have a law suit was in some sort a mark of distinction, and the investor in such amusements would have something to talk about and crow over his less fortunate neighbors with. The effect of this state of things was bad upon the lawyers. As a delay, or a continuance rather, of a case meant postponement for six months at least, lawyers directed their efforts to procuring such delays, and paid much more attention to the process of the court for the purpose of detecting an error than they did to the merits of the case. To quash a summons was of itself a victory; to set aside the process of the court, thus making a delay and entailing some costs upon the other side, was a notable victory.

I have suggested that the times fifty years ago were very different from the present, and I may add that the practice of a kind that will never occur again on this continent. All lawyers of any prominence "rode the circuit." That is they practiced in all the counties of their judicial district, and accompanied the judge on his semi-annual trips to the various county seats. Railroads were comparatively unknown, and travelers either rode in two-wheeled "gigs" or on horseback, the latter being the usual conveyance of the lawyers. They carried saddle-bags in which were packed their clothes and a few law books, usually not more than two, and these were always such as might be useful for technical purposes during the trial, such as Chitty on Pleadings and Starkie on Evidence. Reports of law which might enable the court to render correct decisions on the merits of a case were seldom taken, partly because there was no way to carry them, but chiefly because a lawyer rarely knew in advance what books he needed. In a vast majority of cases the circuit-rider never knew what suits he would be called to try until he reached the county seat, and it very frequently happened that he was not called into a case until the jury was being impaneled to try it, and would acquire his first knowledge of the questions involved by reading the pleadings while his local associate was asking prolix and needless questions touching the qualifications of jurymen, every one of whom he knew, as he did also their relations with the parties to the suit. To successfully conduct a suit under such circumstances required great ability, combined with rapidity of thought, and when it is remembered that while the amounts involved were insignificant, the questions at issue ran through the whole gamut of the law, it will not appear sur-

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prising that such a practice produced men of gigantic intellect and technical habits—a combination of qualities only possible under such surrounding. There were any amount of criminal cases, from malicious malice to murder, and a surprising number of cases which might be called—to borrow a word to which a distinguished jurist has acquired a prescriptive and exclusive right by immemorial user—"quasi" criminal, such as slander, for intance. If it be true that the slang of one century is the classic of the next, fifty years from now our cultured people will fill their vocabulary from the reports of the period I am describing.

There seems to have been a mania for slander suits. If one in anger used an expression out of the common in regard to his neighbor, forthwith the aggrieved party sought out a lawyer to see if he couldn't make the slanderer "prove it." In addition to these sources of litigation, every neighborhood quarrel bred law suits. To-day the lawyer would be called on to defend a man whose hogs had rooted through a worm fence and done some small damage to a neighbor's corn patch. To-morrow he would defend the same man's title to his home. In the trial of these cases he had no precedents either to guide or befog him; he had to trust to his own resources, and by force of pure logical reasoning impose the law upon the court, and the law thus made was all the better that it was founded on reason and not on precedent. When court adjourned for the day a new duty devolved upon the lawyer, though the unintiated always supposed it was his pastime: he had to enter into a contest of wit with his fellows for the delectation of the out-siders, and many a man has been retained in an important case in the morning solely on account of a witty remark, a quick repartee, or a well-told story of the night before. At the country taverns all the litigants and most of the witnesses gathered in to hear the lawyers engage in these encounters, and he was the best lawyer who was foremost in them. That such contests degenerated into mere buffooneries at times before such audiences, cannot be denied; but it is equally as true that they sharpened the intellect, quickened the wits, and gave impetus to the faculty of quick and sound reasoning. That Judge Usher felt the influence of such surroundings and was both the better and worse in consequence, was manifest to all who knew him well. The ill effects were, however, superficial; the good were permanent and far-reaching, giving him the knowledge of juries, the vigorous grasp of all the facts and the knowledge of the relation they bore to each other, together with the power of presenting them logically arranged and illustrated by apt anecdotes, which so eminently characterized him. Under such circumstances and such surroundiugs, Judge Usher began his professional career, mixing with it, as did all lawyers in those days, a strong taste for politics.

Judge Usher was a Whig, and in the contest of 1840 took a memorable part, making speeches for General Harrison in all the counties in the judicial district in which he practiced. On the 15th day of December, 1842, Governor Samuel Bigger appointed him prosecuting attorney for the Seventh Judicial District, which office he held for two years. In

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1844 he was married to Margaret Patterson, at Rockville, Indiana, who with three sons, John P., Linton and Samuel, survive to mourn his loss. In 1856 he was the Republican candidate for Congress in the Terre Haute District, and was, as he frequently expressed it, "one of the midwives of the party." He was admitted to practice in the Supreme Court of the United States on the 1st of February, 1859. November 23d, 1861, Governor Morton, war Governor of Indian, appointed him Attorney General of the State, which office he held (filling it well, it is needless to say) until the 22d of March, 1862, when he was made Assistant Secretary of the Interior, being the first incumbent of that office after it was created. He continued to hold this office until the 8th of January, 1863, when he was appointed Secretary of the Interior by Mr. Lincoln. In all the years preceding his appointment as Secretary of the Interior, he had been actively engaged in the practice of law in the State of Indiana, and was, it is safe to say, as well known in southern Illinois and all through Indiana, as any other lawyer practicing in that region of the country, and during the course of his practice he had been frequently opposed to and associated with Mr. Lincoln in the trial of law suits in his own State and in the State of Illinois, and I hazard nothing in saying that his reputation as a lawyer was as great in the country in which he lived as was that of Mr. Lincoln's in his home.

His connection with Mr. Lincoln's Cabinet was the first thing which brought him conspicuously before the country. His department, however, was one which had no special connection with the war, and therefore but little is found of him in the history of that time. But his department was conducted with great energy, skill, and honesty, and I think I may add without seeming to re-write history, that he alone, of all the Cabinet, fully understood and appreciated the greatness of Mr. Lincoln, and was in turn more largely trusted by Mr. Lincoln than any other member of the Cabinet. I do not mean by this that Mr. Lincoln was guided by Judge Usher's judgment or opinions in the conducting of war, nor that Mr. Lincoln had greater faith in the soundness of Judge Usher's judgment than in that of the other members of the Cabinet, but that he had more confidence in the man, and was fully satisfied that any opinion which he gave him upon any subject was absolutely honest and unselfish Their long acquaintance and intimate intercourse before Mr. Lincoln became President, gave him an opportunity to understand Judge Usher, and to know how thoroughly he might be confided in; and the confidence thus placed in him, it is needless to say, was never betrayed. Neither was there at any time in Judge Usher's heart the slightest feeling of envy toward Mr. Lincoln; though it is an open secret that a good many less-conspicuous lawyers of Illinois and Indiana never quite forgave Mr. Lincoln for having been chosen President, and went to their graves imbittered toward the world because the choice had not fallen on them instead of him. Judge Usher was not only loyal to Mr. Lincoln in everything, but had for him personally an honest and enduring affection; and when that great soul whitened in immortality

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like a star into morning, the nation produced no more sincere mourner than he.

Shortly after the assassination of Mr. Lincoln, Judge Usher became connected with the Kansas Pacific Railroad as its General Solicitor, which position he held until the consolidation of the Kansas Pacific with the Union Pacific. His selection was eminently a good one. No man had done more from purely unselfish and patriotic motives in the interests of the Pacific railroads than he.

After his appointment, sometime in 1866, he moved to Kansas to look after the interest of his road, and finally brought his family to Lawrence in '69, where they have ever since resided.

After the consolidation of the roads before referred to, the Judge remained General Attorney and General Counsel for the Union Pacific in Kansas until the time of his death. During the twenty-five years of his connection with the road, he gave his exclusive time and entire attention to its interests, and served it with a loyalty and zeal which I venture to say have never been equalled by any man in America. It was his pet and his love; and so intense was his devotion to its interests that, while he forgave all things personal, he very rarely pardoned any man for even the assertion of a claim against it. As illustrative of this zeal and devotion, I may be pardoned for mentioning a little anecdote in which I was involved. We had tried a long and fiercely-contested personal injury case at Wyandotte, and after the case had been given to the jury we started down town. We were both conscious of having done the best we could for our client, and ought to have felt comfortable, without being worried as to the result. The Judge, however, tramped moodily ahead while I lagged in the rear, laughing and talking with the counsel for the plaintiff. After supper the Judge brightened up somewhat, and in pointing out to me my faults as a lawyer, gave emphasis to the peculiarities above referred to in his own character. He said to me, "You have two great faults as a lawyer: you never seem to think that the other side is an infernal scoundrel, and it does not seem to hurt you to lose a law suit; but, by heavens, Archie, it breaks my heart."

About two years ago a tumor formed on his neck, and soon assumed alarming proportions. When it was too late, he went to Philadelphia to have it removed. He was indifferent as to the result. He wanted relief or death. When the operation was performed it was discovered that the poisonous fibers of the tumor had reached the vital organs and poisoned his blood, making his case hopeless; and when the supreme hour had come, he met death with the same calm courage with which he had faced life. Nay, more than that, he met it gladly; for Death looks Janus-faced to youth and age. To the young and the strong, filled with the sensuous joy of earth, and loving life for life's own sake, he shows a face filled with terrors—stern, cruel, and relentless; but to the old and weary, on whom "dull Time feeds like slow fire on a hoary brand," his face is serenely sweet, soft and enticing; and when with loving care and gentle touch he folds the withered hands upon the withered heart of age, he is as benignly beautiful as his twin sister—Sleep. And so I am

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very sure that for him there was music in the voice that called him to lay aside the armor he had worn so long, and rest: and when his fading eyes were turned for the last time on earth and sky, death appeared to him, not as man's ruthless destroyer clad in terror, but as a merciful angel of deliverance, robed in beauty and enveloped in the nibus of the gods.

> "Why should not he whose touch dissolves our chain,
> Put on his robes of beauty when he comes
> As a deliverer?"

It is a somewhat difficult task to point out the characteristics of Judge Usher as a lawyer, and needless to attempt to assign him his proper place in history, for the reason that a lawyer has no place in history. Of all mortals, the lawyer is the most ephemeral. The very nature of his work precludes the possibility of his doing anything which shall survive him. The statesmen and the great inventors of the world have a chance for a certain degree of fame, while the reputation carved out by heroes with the red sword of war, and builded upon the bones of their victims, cemented by their blood, may last forever; but the lawyer is necessarily forgotten in a short time. Daniel Webster as a lawyer, would be no more known to-day than are fifty equally as good lawyers of Massachusetts with whom he practiced during his career. The most that any lawyer, considered simply as a lawyer, has to hope or fear, is the short-lived famed preserved by tradition; and tradition is to the memory of the dead what caricature is to the living—it seizes some salient feature and grossly exaggerates it at the expense of the others. Thus we know Tweed by his diamond, Roscoe Conkling by his strut and curl; and Tom Corwin by his anecdotes. It may be said of Judge Usher, however, that he was a very powerful advocate, fertile in resources, and a born fighter. So tenacious and pugnacious was he, that if he should once abandon a position as absolutely untenable, he would charge with all of his force to recapture it if he found it occupied or defended by some one else. During the period when characters are being formed, and habits acquired which become second nature, the Judge's practice had been confined to Indiana, and to a period when law and the practice of law was a still greater travesty upon justice than it is to-day, and necessarily he imbibed some of its faults. I have elsewhere said, that during this early period technicalities were more regarded than merits, and it is not strange that the Judge should have been, as he was, a great stickler for technicalities. We are all great reformers in our youth, and give impetus to every forward movement which, to our heated imaginations, may aid the world; but when we have reached middle life we have become unconsciously enrolled among the conservatives, and look with distrust upon all reforms except those which we helped to accomplish. The Judge had reached the conservative stage of life before our improved practice had been adopted, and had learned to believe, with Blackstone, "That the common law was the perfection of human reason;" hence he never took kindly to modern practice, nor believed in it. I have said that the Judge was a powerful advocate. I may add that in my opinion, had he been on the popular side of a case, standing as the

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tribune of the people to assert their rights and remedy their wrongs, he would have been the most successful advocate at the bar of the United States; and it seems almost like the irony of fate that a man magnificently equipped to achieve victories upon the popular side of questions, should have given the best years of his life to the service of a client for whom no amount of skill or eloquence could win a verdict.

The Judge's habits of life and thought peculiarly adapted him to dealing with juries. A man of fine presence and fluent of speech, he was intimately acquainted with the homely side of a juryman's nature, and knew all the details of his daily life. Never a great reader of books, he was a great reader of men, and took a kindly and genuine interest in all the little details of their lives. In his frequent journeys upon railway trains, going to and returning from court, he invariably, and much to the astonishment of railroad crews, rode in the smoking-car instead of the sleeper, knowing as all intelligent men do, that one can obtain more information from the people in the smoking or emigrant car than he can in the other; they are less guarded in their speech, more frank in the expression of opinion, less veneered with that social hypocrisy born of organized society, and have a narrow range of subjects of discussion. The Judge was always fond of talking to such people, and his well ordered and powerful memory treasured everything they said, even the most trifling and apparently immaterial events, so that he could always call them to his aid when necessary; and he would listen with equal interest to the views of the politician discussing the governments of the world, and the quaint farmer explaining the difference between a bread poultice and one made of flaxseed; and if in the views of the latter a hot poultice was superior to a cold one, the Judge would remember that fact, and the reason for such preference, so in discussing a case to a jury, he was, as I have said, equipped for his task by being able to talk to them about the little affairs which interest them, such as explaining the proper manner of tying a hame-string, shortening a trace-chain or mending a plow, etc.; and while this kind of argument seemed irrelevant to the cultured lawyers sitting around, it was in fact very effective; it placed the Judge *en rapport* with the jury and they felt as much at home with him as though they were sitting at a chopping-block discussing neighborhood affairs; and as I have said, had he been upon the popular side of cases, this faculty would have made him very effective.

Judge Usher, too, was very successful as a lawyer. It is true that he rarely secured a verdict while attorney for a railroad, because without the direction of a court, no jury in this State will render a verdict for a railroad company; yet in the review of the cases in the Supreme Court the Judge was very successful in obtaining reversals, and in finally winning his cases. And in the Supreme Court of the United States he won some notable victories by the pure force of his great knowledge of law, and his clear headed way of presenting his case.

I have spoken freely of the Judge's professional character, because it belongs to us, and because the faults suggested were not his, but be-

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longed to the times in which his legal character was being formed. Of him personally, all men speak well; and while there is for him, as for us, no hope that his legal work will live, his memory will be preserved because of his personal virtues. He was charitable and kind-hearted; strong in his friendships and weak in his enmities. Though he tried to make himself believe that he was vindictive and unforgiving, he was not; nor could he cherish malace for a personal wrong, although he was slow to forgive anyone who had wronged the Kansas Pacific, and anyone who asserted any claim against the road had wronged it. He was broad and catholic in his personal views; narrow and fixed in his professional. In a law suit, his client was always right. Of him could be said, as Lowell said of Gen. Jackson,

"He couldn't see but jest one side:
Ef his, 'twas God's an' that was plenty!"

But in the vast range of things outside of law he was generous and broad. He saw clearly that truth is many-sided, and quarreled with no man's beliefs. In his case the conservatism of age extended only to the law: outside of that, precedent was not binding on him. He would look one in the mouth as coolly as a sensible man would a gift horse. He rejected nothing because it was new: accepted nothing because it was old.

I have said he was charitable—he was more than that: he gave alms that carried no sting, and conferred favors that did not wound. For all the erring he had kindly counsel and kindly thoughts, and sought always to pilliate the conduct of wrong-doers rather than exagerate it.

He was a great story-teller, and his stories were always pointed and apropos. There is no faculty more valuable and less understood than the use of a good story as an argument. Well told it illuminates a subject, so that even the dull witted can see its force. In this faculty Judge Usher excelled, but like most men of this stamp, he was a serious man. There is no boundary line between humor and pathos. They blend together so quietly that the change cannot be seen, and yet the severely practical man always thinks the man of humor a mere jester, and nothing more. I have said that tradition was a post-mortem caricature, and the habit of telling stories is the trait in a man's character most easily remembered; hence it is the one most magnified after death. Although our State is still young, many of our earlier dead are only known to us by some anecdote told of them. Had not Mr. Lincoln been called to his responsibilities, he, the greatest soul of the century, gentle as a child and pure as a woman—would to-day be remembered only as the teller of coarse stories, which conscientious dullards would repeat with tiresome details, omitting nothing but the point. Lowell, the sweetest singer America has produced, is almost unknown as a serious poet, and is compelled to wear the "cap and bells" because the "Biglow Papers"—the first mortal blow slavery received in the United States—was filled to overflowing with the crude humor of the "unhigh schooled" New-Englander. Judge Usher cannot escape the fate of

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all men of broad and kindly humor, and many pointless jests he would have scorned to tell, will be laid at his door, and accepted by those who did not know him, as indicative of his character.

For the purpose of showing the character of his humor, which sometimes — though not often — had a caustic tone, I will mention one anecdote. One of the brightest young men of the State, whose untimely death we all deplored a few years ago, was the proprietor of a newspaper and a hotel. He got into a controversy with the Judge, and in an editorial denounced him as "haughty and fastidious." The Judge wrote him a good-natured letter, in which, among other things, he said: "I do not thing I am haughty, for I always ride in the smoking-car; and I know I am not fastidious, for I once stopped three days at your hotel."

In deference to the universal precedent, I ought not, in concluding, to omit the expression "he had his faults!" So have the Pyramids, but from the dawn of history they have stood amid the beleaguering sands of the Desert and listened with indifference to the fault-finding centuries, and will continue to tower in serene and awful majesty until buried from sight beneath the accumulated dust of forgotten critics. The phrase was invented as a salve wherewith to anoint an irritated conscience, and is as pointless as an aphorism as the statement that two and two are four. The faultless man is, fortunately, an impossibility; but were it possible to reverse the laws of nature and inflict the earth with such a monster, mankind would rise with one accord and slay it! To say that a man has his faults, is merely to say that he is human. It will be well, indeed, for the surviving relatives of the next who dies, if, standing above his open grave, some friend can say without blushing, as we can do and say of Judge Usher, he was a good friend, a good citizen, a good neighbor, a good husband and father, and an honest man!

He is at rest. Sorrow, suffering, and disappointments can torture him no more. The voice of calumny cannot wound his gentle heart, nor words of love and kindness reach him.

"The joy, the triumph, the lament; the exultation and the pain" of life, are his no longer. Touched by the magic wand of death, the barrier at which all who live must pause flung wide its golden gate to let him through; and closing, left us—not him—in darkness, Life beats in vain against that barrier and demands to know, but to its clamorous importunings, its desparing cry for but one ray of light, one gleam of hope, one word of certainty whereon to build more firm its wavering faith, the grim guardian of the gate and secret returns the mocking and unsolving answer, Wait! And so, barred from the light and knowledge, we hope, and fear, and question: he sees and knows. We grope among the shadows in the night of life; he stands triumphant in the white radiance of perpetual day. And so we leave him to his rest, and wait the breaking of that cloudless dawn, when, out of darkness, we shall meet and know.

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ROLL OF MEMBERS.

NAME.	ADDRESS.	ADMITTED.
Ady, J. W.	Newton	June 4, '84.
Alford, D. S.	Lawrence	June 6, '83.
Allensworth, J. T.	Atchison	June 6, '83.
Angevine, C.	Mankato	June 6, '83.
Austin, James H.	Kan. City, Mo.	Jan. 9, '83.
Austin, Edwin A.	Topeka	Jan. 13, '86.
Anderson, T. P.	Kan. City, Ks.	Jan. 8, '89.
Alden, H. L.	Kan. City, Ks.	Jan. 13, '85.
Abbott, A. J.	Garden City	Jan. 8, '90.
Brewer, David J.	Leavenworth	Jan. 9, '83.
Baker, Sperry	Paola	June 6, '83.
Barber, E. A.	Humboldt	June 6, '83.
Bird, W. A. S.	Topeka	June 6, '83.
Benson, A. W.	Ottawa	Jan. 9, '83.
Buchan, W. J.	Kan. City, Ks.	Jan. 9, '83.
Broderick, Case	Holton	Jan. 9, '83.
Bertram, G. W.	Oberlin	Jan. 13, '85.
Bond, T. L.	Salina	Jan. 13, '86.
Barker, George J.	Lawrence	Jan. 13, '85.
Bucher, Charles	Newton	June 4, '84.
Buck, J. Jay	Emporia	Jan. 11, '87.
Bradford, S. B.	Topeka	Jan. 8, '88.
Bertram, E. S.	Council Grove	Jan. 11, '87.
Bergen, A.	Topeka	Jan. 11, '87.
Blue, R. W.	Pleasanton	June 6, '83.
Benton, C. E.	Iola	Jan. 8, '90.
Bowman, C. S.	Newton	Jan. 8, '90.
Brown, W. E.	Newton	Jan. 8, '90.
Brown, Milton	Garden City	Jan. 8, '90.
Crozier, Robert	Leavenworth	Jan. 9, '83.
Chandler, George	Independence	Jan. 9, '83.
Case, George H.	Mankato	Jan. 9, '83.
Campbell, W. P.	Wichita	Jan. 9, '83.
Campbell, W. C.	Topeka	June 6, '83.
Clarke, Fabius M.	Kan. City, Mo.	June 6, '83.
Clarke, W. B.	Kan. City, Mo.	Jan. 13, '85.
Clogston, J. B.	Eureka	Jan. 13, '85.
Cornell, George G.	Alma	Jan. 4, '88.
Campbell, A. B.	Topeka	Jan. 12, '87.
Cunningham, H. S.	Salina	Jan. 8, '89.
Call, Henry L.	Topeka	Jan. 8, '89.
Cunningham, E. W.	Emporia	Jan. 8, '90.
Douthitt, Wm. P.	Topeka	Jan. 13, '85.
Doster, Frank	Marion	Jan. 9, '83.
Dassler, C. F. W.	Leavenworth	Jan. 8, '89.
DeGeer, Mrs. M. E.	Topeka	Jan. 12, '87.
Day, John W.	Topeka	June 6, '83.
Devenney, A. S.	Olathe	June 6, '83.
Douglas, G. L.	Wichita	Jan. 8, '90.
Everest, A. S.	Atchison	Jan. 9, '83.
Earle, Lucien	McPherson	Jan. 8, '89.
Ellis, A. H.	Beloit	Jan. 8, '89.
Eaton, Robert M.	Atchison	Jan. 8, '89.
Emery, R. M.	Seneca	Jan. 8, '89.
Foster, C. G.	Topeka	June 6, '83.
Foster, F. H.	Topeka	Jan. 11, '87.
Falloon, James	Hiawatha	June 6, '83.
Freeman, W. H. H.	Blue Rapids	Nov. 28, '83.
Fenlon, Thomas P.	Leavenworth	Jan. 9, '83.
French, C. O.	Salt Lake City	Jan, 9, '83.
Frith, J. Harvey	Emporia	Jan. 8, '89.
Graves, Charles B.	Emporia	Jan. 9, '83.
Glasse, W. B.	Oswego	Jan. 9, '83.
Green, J. W.	Lawrence	Jan. 9, '83.
Gillpatrick, J. W.	Leavenworth	Jan. 9, '83.
Garver, T. F.	Salina	June 6, '83.
Gillett, Almerin	Emporia	Jan. 13, '83.
Green, W.	Leavenworth	June 6, '83.
Griffin, Chas. T.*	Atchison	June 6, '83
Green, H. T.*	Leavenworth	June 6, '83.
Guthrie, John	Topeka	June 6, '83.
Gillette, F. E.	Kingman	Jan. 13, '85
Guthrie, W. W.	Atchison	Feb. 3, '85.
Green, George S.	Manhattan	Jan. 11, '87.
Gleed, J. W.	Topeka	Jan. 8, '89.
Gleed, C. S.	Topeka	Jan. 13, '86.
Getty, George	Syracuse	Jan. 8, '90.
Godard, A. A.	Clay Center	Jan. 8, '90.
Hutchings, C. F.	Kan. City, Ks.	June 6, '83.
Horton, Albert H.	Atchison	Jan. 9, '83.
Houk, L.	Hutchinson	Jan. 9, '83.
Harris, Amos	Wichita	Jan. 9, '83.
Humphrey, James	Junction City	Jan. 9, '83.
Hayden, Charles	Holton	June 6, '83.
Hayden, Sidney	Holton	June 6, '83.
Hudson, T. J.	Fredonia	June 6, '83.
Hallowell, J. R.	Wichita	June 6, '83.
Hurd, T. A.	Leavenworth	June 6, '83.
Hick, R. S.	Louisville	Jan. 13, '85.
Hagerman, James	Kan. City, Mo.	Jan. 13, '86.
Hayward, F. M.	Kan. City, Mo.	Jan. 13, '86.
Humphrey, H. J	Hutchinson	Jan. 12, '87.
Holt, Joel	Beloit	Jan. 3, '88.
Harris, Vernon H.	Lawrence	Jan. 4, '88.
Harkness, F. P.	Clay Center	Jan. 8, '89.
Hadley, D. B.	Kan. City, Ks.	Jan. 8, '89.
Haun, T. S.	Jetmore	Jan. 8, '89.
Harrison, T. W.	Topeka	Jan. 3, '88.
Hopkins, Scott	Horton	Jan. 3, '88.
Hutchinson, E.	Marysville	Jan. 4, '88.
Hamilton, A. L. L.	El Dorado	Jan. 8, '90.
Hessin, John E.	Manhattan	Jan. 8, '90.
Huron, G. A.	Topeka	Jan. 8, '90.
Johnson, W. A.	Garnett	June 6, '83.
Johnson, J. B.	Topeka	June 6, '83.
Johnston, W. A.	Minneapolis	June 6, '83.
Johnson, J. G.	Garnett	Feb. 3, '85.
Johnston, W. T.	Paola	Jan. 13, '86.
Jetmore, A. B.	Topeka	Jan. 11, '87.

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NAME.	ADDRESS.	ADMITTED.
Jewett, E. B.	Wichita	Jan. 8, '89.
Johns, H. C.	Larned	Jan. 8, '90.
Jones, Howell	Topeka	Jan. 8, '90.
Kellogg, L. B.	Emporia	Jan. 13, '85.
Kelso, David	Parsons	Jan. 13, '85.
Kingman, Sam'l A.	Topeka	Jan. 13, '86.
Kimball, C. H.	Parsons	Jan. 11, '87.
Kellogg, Mrs. J. M.	Emporia	Jan. 8, '89.
Keeler, Henry	Topeka	Jan. 8, '90.
Littlefield, W.	Ottawa	Jan. 13, '85.
Leland, Cyrus A.	ElDorado	Jan. 9, '83.
Lewis, Ellis	Osage City	Jan. 9, '83.
Lewis, C. C.	Phillipsburg	Jan. 13, '85.
Lloyd, Ira E.	Ellsworth	Jan. 13, '55.
Lovitt, R. A.	Salina	Jan. 13, '86.
Lawrence, S. S.	Osborne	Jan. 13, '86.
Larimer, J. B.	Topeka	Jan. 8, '90.
Little, G. F.	Junction City	Jan. 8, '90.
Little, E. C.	Abilene	Jan. 8, '90.
Martin, David	Atchison	Jan. 9, '83.
Martin, John	Topeka	Jan. 8, '83.
Moore, H. Miles	Leavenworth	June 6, '83.
May, A. R.	Hiawatha	June 6, '83.
Monroe, Charles	Topeka	June 6, '83
Mahan, John H.	Abilene	Nov. 28, '83.
Mills, F. D.	Kan. City, Ks.	Jan. 13, '86.
Milliken, J. D.	McPherson	Jan. 11, '87.
Maltby, J. C.	Minneapolis	Jan 11. '87.
Miller, O. L	Kan. City, Ks.	Jan. 8, '89.
McCleverty, J. D.	Fort Scott	Jan. 9, '83.
McClure, J. R.	Junction City.	June 6, '83.
McFarland, J. D.	Topeka	June 6, '83.
McLean, H A.	Marion	Jan. 12, '87.
McCammon, G. W.	Topeka	Jan. 8, '89.
McDonald, C. W.	Concordia	Jan. 8, '89.
Madden, Dennis	Cott'nw'd Fl's.	Jan. 8, '90.
Mason, Rankin	Topeka	Jan. 8, '90.
McFarland, E. A.	Lincoln	Jan. 8, '90.
McMullen, J. F.	Winfield	Jan. 8, '90.
Nellis, D. C.	Topeka	Jan. 13, '85.
Nicholson, M. B.	Council Grove	Feb. 8, '85.
Overmyer, David	Topeka	Jan. 8, '89.
Osborne, S. J.	Wa-Keeney	Jan. 8, '90.
Prescott, J. H	Salina	Jan. 9, '83.
Pratt, W. H.	Phillipsburg	Jan. 9, '83.
Peck, George R.	Topeka	Jan. 9, '83.
Patchin, A. L.	Stockton	Jan. 9, '83.
Perry, W. C.	Fort Scott	June 6, '83.
Patterson, W. J.	Lawrence	Jan. 13, '86.
Peckham, Chas. J.	Winfield	Jan. 11, '87.
Powell, Omar	Washington	Jan. 8, '88.
Porter, Silas W.	Ness City	Jan. 8, '88.
Pierce, H. A.	Topeka	Jan. 8, '89.
Quinton, A. B.	Topeka	Jan. 4, '88.
Quinton, E. S.	Topeka	Jan. 4, '88.
Rossington, W. H.	Topeka	Jan. 9, '83.
Redden, A. L.	ElDorado	Jan. 13, '85.
Reed, Isaac G.	Wellington	Feb. 8, '85.
Riggs, S. A.	Lawrence	Jan. 13, '86.
Robinson, R. G.	Holton	Jan. 11, '87.
Root, H. C.	Topeka	Jan. 8, '89.
Redd, George S.	Ness City	Jan. 8, '89.
Radcliffe, H. J.	Cott'nw'd F'ls	Jan. 8, '90.
Rightmire, W. F.	Topeka	Jan. 8, '90.
Robinson, E. F.	Osborne	Jan. 8, '90.
Stephens, N. T.*	Lawrence	Jan. 9, '83
Smith, Clark A.	Cawker City	Jan. 9, '83
Strang, J. C.	Larned	Jan. 9, '83.
Snoddy, J. D.	La Cygne	Jan. 9, '83.
Sluss, H. C.	Wichita	Jan. 9, '83.
Scott, W. W.	Emporia	Jan. 9. '83.
Sturgis, F. W.	Concordia	Jan. 9, '83.
Sutherland, J. W.	Neodesha	June 6, '83.
Smith, C. B.	Topeka	June 6, '83.
Simpson, B. F.	Topeka	June 6, '83.
Shafer, J. D.	Leavenworth	June 6, '83.
Seaver, B. A.	Troy	June 6, '83.
Stillwell, L.	Osage Mission	June 6, '83.
Smith, Charles W.	Stockton	Jan. 13, '85.
Smith, W. W.	Waterville	Jan. 13, '85.
Spencer, James M.	Topeka	Feb. 8, '85.
Smith, G. P.	Humdoldt	Feb. 8, '85.
Seabrook, S. L.	Topeka	Jan. 13, '86.
Stevens, Hiram	Paola	Jan. 13, '86.
Smith, Wm. R.	Atchison	Jan. 13, '86.
Sheridan, John C.	Paola	Jan. 13, '86.
Stewart, J. H.	Topeka	Jan. 4, '88.
Summerfield, M.	Lawrence	Jan. 4, '88.
Spencer, Chas. F.	Topeka	Jan. 4, '88.
Sedgwick, T. N.	Emporia	Jan. 8, '89.
Scott, Henry W.	Larned	Jan. 8, '89.
Talcott, H. W.	Iola	Jan. 9, '83.
Torrance, E. S.	Winfield	Jan. 9, '83.
Thatcher, S. O.	Lawrence	Jan. 9, '83.
Taylor, Irwin	Topeka	Jan. 13, '86.
Tomlinson, J. C.	Atchison	Jan. 13, '86.
Troutman, J. A.	Topeka	Jan. 12, '87.
Tillotson, D. C.	Topeka	Jan. 8, '89.
Thompson, L. H.	Norton	Jan. 8, '90.
Valentine, D. M.	Topeka	Jan. 9, '83.
Vandeveer, G. A.	Hutchinson	Jan. 8, '90.
Wagstaff, W. R.	Paola	Jan. 9. '83.
Wilson, A. S.	Sioux City, Ia.	Jan. 9, '83.
Webb, W. C.	Topeka	Jan. 9, '83.
White, J. M.	Howard	June 6, '83.
Wilder, George C.	Manhattan	June 6, '83.
Ware, E. F.	Fort Scott	June 6, '83.
Wheat, L. B.	Leavenworth	June 6, '83.
Waggener, B. P.	Atchison	June 6, '83.
Webb, W. D.	Atchison	Jan. 13, '85.
Waterbury, Ed. S.	Emporia	Jan. 13, '85.
Walrond, Z. T.	Osburne	Jan. 11, '87.
Webb, L. J.	Topeka	Jan. 4, '88.
Wells, Abijah	Seneca	Jan. 8, '89.
Wall, T. B.	Wichita	Jan. 8, '90.
Welch, R. B.	Topeka	Jan. 8, '90.
Willcockson, K. E.	Oakley	Jan. 8, '90.

* Deceased.

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EIGHTH ANNUAL MEETING

OF THE

BAR ASSOCIATION

OF THE

STATE OF KANSAS.

HELD IN THE CITY OF TOPEKA,

JANUARY 20 AND 21, 1891.

TOPEKA, KANSAS:
GEO. W. CRANE & CO., PRINTERS AND BINDERS.
1891.

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OFFICERS FOR THE YEAR 1891.

PRESIDENT, ... DANIEL M. VALENTINE.
VICE-PRESIDENT, ... L. HOUK.
SECRETARY, ... C. J. BROWN,
TREASURER, ... HOWEL JONES.

EXECUTIVE COUNCIL.

T. F. GARVER, CHAIRMAN,

E. W. CUNNINGHAM, M. B. NICHOLSON,
J. R. M'CLURE, W. P. DOUTHITT.

DELEGATES TO AMERICAN BAR ASSOCIATION.

T. F. GARVER, B. P. WAGGENER, J. H. GILLPATRICK.

DELEGATES TO NATIONAL BAR ASSOCIATION.

W. A. JOHNSTON, A. H. ELLIS, G. F. LITTLE,
ROBERT CROZIER, J. W. GLEED, J. F. McMULLEN.

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OFFICERS OF PREVIOUS YEARS.

OFFICERS FOR THE YEARS 1883-4.

President.....ALBERT H. HORTON. | *Secretary*.....W. H. ROSSINGTON.
Vice-President...N. T. STEPHENS. | *Treasurer*.....D. M. VALENTINE.

Executive Council:

D. M. VALENTINE, *Chairman*, JAMES HUMPHREY, DAVID MARTIN,
J. H. GILLPATRICK, FRANK DOSTER.

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Vice-President...W. A. JOHNSTON. | *Treasurer*.....D. M. VALENTINE.

Executive Council:

D. M. VALENTINE, *Chairman*, JAMES HUMPHREY, DAVID MARTIN,
E. S. TORRANCE, L. HOUK.

Delegates to American Bar Association:

A. S. EVEREST, A. L. REDDEN, JAMES HUMPHREY.

OFFICERS FOR THE YEAR 1886.

President.....ALBERT H. HORTON. | *Secretary*.....JOHN W. DAY.
Vice-President...E. S. TORRANCE. | *Treasurer*.....D. M. VALENTINE.

Executive Council:

W. A. JOHNSTON, *Chairman*, JOHN GUTHRIE, A. W. BENSON,
M. B. NICHOLSON, JOHN H. MAHAN.

Delegates to American Bar Association:

DAVID J. BREWER, W. H. ROSSINGTON, FRED. D. MILLS.

OFFICERS FOR THE YEAR 1887.

President.....SOLON O. THACHER. | *Secretary*.....JOHN W. DAY.
Vice-President...HENRY C. SLUSS. | *Treasurer*.....D. M. VALENTINE.

Executive Council:

W. A. JOHNSTON, *Chairman*, C. B. GRAVES, ROBERT CROZIER,
GEORGE S. GREEN, T. F. GARVER.

Delegates to American Bar Association:

W. W. GUTHRIE, A. L. REDDEN, T. A. HURD.

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OFFICERS FOR THE YEAR 1888.

President.....W. A. JOHNSTON. | *Secretary*.....JOHN W. DAY.
Vice-President...EUGENE F. WARE. | *Treasurer*.....D. M. VALENTINE.

Executive Council:

JOHN GUTHRIE, *Chairman*, S. B. BRADFORD, GEORGE J. BARKER,
J. W. ADY, J. H. MAHAN.

Delegates to American Bar Association:

SOLON O. THACHER, ALBERT H. HORTON, HENRY C. SLUSS.

OFFICERS FOR THE YEAR 1889.

President.....JOHN GUTHRIE. | *Secretary*.....CHAS. S. GLEED.
Vice-President...T. F. GARVER. | *Treasurer*.....D. M. VALENTINE.

Executive Council:

B. F. SIMPSON, *Chairman*, W. W. SCOTT, L. B. KELLOGG,
A. W. BENSON, CHAS. S. HAYDEN.

Delegates to American Bar Association:

J. W. GREEN, J. H. GILLPATRICK, CHARLES MONROE.

Delegates to National Bar Association:

ROBERT CROZIER, M. B. NICHOLSON, ROBERT M. EATON,
GEO. S. GREEN, H. L. ALDEN, J. W. ADY.

OFFICERS FOR THE YEAR 1890.

President.....ROBERT CROZIER. | *Secretary*.....C. J. BROWN.
Vice-President...CHAS. B. GRAVES. | *Treasurer*.....HOWEL JONES.

Executive Council:

B. F. SIMPSON, *Chairman*, JOHN GUTHRIE, CASE BRODERICK,
W. W. SCOTT, R. M. EATON.

Delegates to American Bar Association:

GEORGE S. GREEN, L. B. KELLOGG, W. C. PERRY.

Delegates to National Bar Association:

W. A. JOHNSTON, B. P. WAGGENER, A. H. ELLIS,
J. W. GLEED, G. F. LITTLE, J. F. MCMULLEN.

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MINUTES OF THE EIGHTH ANNUAL MEETING.

TOPEKA, KANSAS, January 20, 1891.

The eighth annual meeting of the Bar Association of the State of Kansas was called to order at 7:30 o'clock P. M., in the Senate Chamber, with the President, Robert Crozier, in the chair.

The reading of the minutes of the last meeting was dispensed with.

The Executive Council reported the names of the following applicants for membership, and recommended their election; and on motion of B. F. Simpson the report was adopted and the persons named were elected: C. S. Winslow, Marion; C. C. Bitting, jr., Abilene; Henry W. Stackpole, Clay Center; W. S. Stambaugh, Abilene; H. W. Gleason, Hutchinson; Thos. J. White, Kansas City, Kans.; H. Whiteside, Hutchinson; Edwin G. Hogan, Ravanna.

The annual address of the President was delivered by Robert Crozier.

Addresses were delivered by Albert H. Horton, on Limitation of Appeals; by John Guthrie and L. Houk, on Courts of Conciliation; by C. S. Gleed, on Western Railway Troubles; by T. B. Wall, on the Law of Descents and Distributions.

Following the addresses was a general discussion of these subjects by the members present.

On motion of Geo. S. Green, a committee of five on nomination of officers for the ensuing year was appointed by the President, as follows: George S. Green, Albert H. Horton, T. F. Garver, A. L. Redden, and W. P. Douthitt.

The Association adjourned to 10 o'clock A. M., January 21, 1891, at which hour it reconvened at the Supreme Court room.

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John D. Milliken addressed the Association on "The Necessity of Intermediate Appellate Courts."

After much discussion of this subject, and other means of relief from the long delay of appellate business, it was determined that a special committee of five be appointed by the President to present to the Legislature the views of this Association on this question. This committee was instructed to prepare and present to the Legislature such a bill as in its judgment will most surely and speedily relieve honest litigants from the hardship of the present long delay of appeals to the Supreme Court; and to urge upon the law-making power the public and private necessity of such an enactment. It was further ordered that the expenses of the committee in this work be paid by the Association.

The committee on nomination of officers for the ensuing year reported as follows:

For President—Daniel M. Valentine.

For Vice President—L. Houk.

For Treasurer—Howel Jones.

For Secretary—C. J. Brown.

Executive Council—T. F. Garver, chairman; E. W. Cunningham, J. R. McClure, M. B. Nicholson, W. P. Douthitt.

Delegates to American Bar Association—T. F. Garver, B. P. Waggener, J. H. Gillpatrick.

Delegates to National Bar Association—W. A. Johnston, A. H. Ellis, G. F. Little, Robert Crozier, J. W. Gleed, J. F. McMullen.

These nominations were unanimously ratified by the Association.

The Memorial Committee being absent, the following special committee was appointed to present resolutions expressing the feelings and sentiment of this Association concerning the death of E. Stillings, W. W. Scott, and H. J. Humphrey, members of this Association and of the bar of this State: J. R. McClure, M. B. Nicholson, T. B. Wall.

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The committee presented the following resolutions, which were unanimously adopted:

Since our last meeting, it has pleased the Almighty Ruler of the Universe to remove from the ranks of our profession and from this life, brothers Edward Stillings, W. W. Scott, and Herbert J. Humphrey. We mourn their death as a great and irreparable loss to the profession and to the State.

Edward Stillings worthily wore, for many years, the well-earned distinction of one of the leaders of the bar of this State. His mind was a store-room of legal learning, and this, added to his untiring industry and application, made him a great lawyer.

W. W. Scott, still a young man, just entering upon the period of middle life, ranked with the ablest lawyers of his age; his industry, eloquence, clear perception, and analytical power, were marked and prominent characteristics. He was a thorough lawyer and an active, brilliant advocate.

Herbert J. Humphrey was one of the promising young lawyers of the State. Although just entering upon his life-work, he had already disclosed those qualities of head and heart that endeared him to the profession, and that were a guaranty of future success and worth.

It can be truthfully said of Stillings, Scott, and Humphrey, the old man, the middle-aged man, and the young man, that they were an honor to this Association and to the bar of the State; they held high the standard of their profession.

We extend to the families of our deceased brothers our sincere sympathy for their great affliction.

A. F. Callahan submitted the following on the life and death of Edward Stillings:

Edward Stillings died suddenly at his beautiful home, in the city of Leavenworth, on the eighth day of February, 1890, of apoplexy. The day previous, he had been about the courts and in his office, and appeared as rugged, cheerful and hearty as at any period of his life.

I pause over his grave to render unto him all eulogy due. One of the finest legal minds of the State was stilled by that fell stroke. His honorable bearing as a professional man; his business capacity; his sincerity in friendship and genial disposition, diffusing a kindness round and about him, not in words more than manners, made him loved and popular.

So much of real worth, joined with such a genial, kindly nature, and with such a splendid physical manhood too, rendered him conspicuous and beloved over the State. His extended experience made him most learned in the law, particularly in its practice, and he was eagerly sought for advice and counsel on every question, even judges on the bench frequently interrogating him as to what was the true and correct practice in given cases.

No one can say that in his practice he ever improved an opportunity to amass wealth at the expense of honor or honesty, yet he died possessed of con-

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siderable estate. He owned an elegant residence, in which he died, with much other valuable property, embracing real estate, stocks and bonds.

Judge Stillings was born near Havre de Grace, Maryland, on July 9, 1823, but removed thence at the age of four years, with his parents, to Springfield, Ohio. He attended the public schools and academies for his early education, and took a course at the University of Ohio. He graduated at Augusta College in Kentucky, after two years more of study. He read law for a time in the office of Judge Welch, of Athens, Ohio, and afterwards, with William C. Lawrence, an eminent jurist of Marysville, meanwhile attending a course of lectures in the Cambridge law school.

He was admitted to the bar in April, 1846, at Cincinnati, Ohio, and in the following autumn opened an office in Kenton, Ohio. He at once became known as a wide-awake and efficient lawyer, and, very soon after his admission, by his industry, diligence and perseverance, took front rank in Ohio and maintained a large practice. For seventeen years he toiled in Kenton with increasing success, but, being desirous for a wider field for himself and a better opening for his sons, concluded to come to Kansas, and reached Leavenworth in June, 1863.

The bar of Leavenworth at that time was not exceeded in brilliancy by that of any in the State, yet, almost immediately, Judge Stillings attained a position and standing second to none. To the day of his death he was actively engaged in the practice, with such signal ability and success that his fame became coextensive with the State.

Twice, in the seventies, Judge Stillings was sent to the House of Representatives of Kansas, where he was accorded the eminence of being one of the ablest legislators. He was made chairman of the Judiciary Committee, where his marked abilities gave him such enviable reputation that upon the passage of the act, in 1877, creating three commissioners to codify the laws of the State, he was appointed upon that board, with Judges Webb and Simpson.

Though not latterly an active politician, Mr. Stillings, originally a Whig, acted with the Republican party from its organization.

Edward Stillings was married on the 30th day of December, 1851, at Kenton, Ohio, two children, both sons, resulting from the union.

Such, my brothers, is the life and history of this noble man. His heart was full of love; for every sorrow he had a tear; for every joy a smile. He was the soul of honor, whether in the office, at court, or by the domestic hearthstone. In his home, he ruled with the gentleness of love. He was the soul of sincerity, and one instinctively felt, in his presence, the moral sublimity of truth.

As a husband he was a model; as a father he was indulgent, but discreetly so; and, as he had been trained in the fear of the Lord, he neglected not to care for the welfare of those who had been intrusted to him. He was not demonstrative nor officious; his joys and delights never finding vent in enthusiastic expression, nor did he pour the tale of sadness into the ear of his friends. As a citizen he commanded esteem for his business capacity, and as a man, though of a rare simplicity of manners and life, his heart was ever on the right side of every moral question, and open to every just demand. His life was thus beautifully blended in the principles of faith, hope and love.

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But he has passed away in the fullness of years, after a clean life, no more to mingle in its changing scenes; leaving behind him a pure record.

He has been laid gently and tenderly to rest, to gather greater reward at the judgment day. Animated by admiration and affection, let us lay as a befitting chaplet on his tomb, a garland of immortelles. "He will fear no evil, for Thou art with him; Thy rod and Thy staff, they comfort him."

L. B. Kellogg spoke as follows concerning W. W. Scott, his intimate cotemporary at the Emporia bar:

Since the last meeting of the State Bar Association, one of its honored members and a member of its Executive Council departed this life. Hon. W. W. Scott, of the Emporia bar, died May 31, 1890. Death severing his membership here, he has since been a member of the living, sentient host of those who are emancipated from the earthly and crowned with the spiritual life.

Our brother Scott was born at the village of Dunfirmline, a few miles from Edinburgh, Scotland, April 4, 1841. He was therefore forty-nine years of age at the time of his death. His parents emigrated to America in 1842, and made their home in New York city. His boyhood was spent among the busy scenes of that metropolis. City life as distinguished from country life left its impress on his character. His mind became marvelously alert and active, his knowledge of human nature sensitively acute and unerring. He acquired the elegance of diction, the grace of manner, the polish of the educated city gentleman, and combined with these the sturdy virtues of honesty and integrity of purpose, independence and industry characteristic of his Scotch parentage and ancestry.

His legal education was acquired in the law office of a firm of busy practitioners in the city, and at the law school of Columbia College. It will thus be seen that brother Scott had exceptional advantages for becoming a good lawyer, and exceptionally well did he improve them. It is my judgment that at the time of his death Mr. Scott was, in all the qualities that go to make up a first-class lawyer, the peer of any member of the Kansas bar.

In 1863 he located at Lake City, Minnesota, for the practice of his profession as a lawyer. This town is situated upon the western shore of that beautiful expansion of the Mississippi river known as Lake Pepin. It was then a village surrounded by a picturesque and romantic country. The woodland scenery there was in every way attractive. Hunting, fishing, sailing upon the lake in summer and skating in winter, were the pastimes of the people. The improvement and development of a new country, the conversion of wooded hills into well-tilled farms, the building of towns and cities, the construction of railroads, and the promotion of public and private business enterprises, such as the people of Kansas are familiar with, were the industries of the people. Nor was politics an unimportant factor among the activities of the Lake City and Wataska county people of Minnesota in those days. The times were active and stirring, but not more so than our brother Scott, then a young man of twenty-two, with

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an active brain, an ardent nature, and a well-trained mind accustomed to city life, but new to rural surroundings.

Mr. Scott participated in all the activities of the people with untiring zeal, and with the fresh glow of a consuming enthusiasm. He built up a fine law practice in Minnesota, and acquired a reputation for ability at the bar and eloquence as a public speaker. He served for four years as County Attorney, and was a delegate to the Republican national convention which met in Chicago in 1868, when Grant was first nominated for the Presidency.

In May, 1874, his health having become somewhat impaired by incessant application to professional work and the rigor of the Minnesota climate, Mr. Scott sought a home in Kansas. He came to Emporia, and became associated in the practice of law with Judge R. M. Ruggles, C. N. Sterry, and J. W. Lynn. Mr. Sterry retired from the firm to form a law partnership with T. N. Sedgwick, and the business was continued as Ruggles, Scott & Lynn. Judge Ruggles died April 24, 1879. The firm then became Scott & Lynn. Mr. Lynn died in the spring of 1886, and J. H. Frith became the partner. The firm continued as Scott & Frith until Mr. Scott's death, in 1890.

Our brother Scott was married in East Bridgewater, Mass., on September 10, 1868, to Miss Annie E. Bryant. His widow and three children, now living, mourn the loss of husband and father, and cherish his memory with sacred love. Mr. Scott's children are two beautiful and accomplished daughters — Helen and Mabel — just arriving at the age of womanhood, and who are as good as they are handsome, and a sturdy boy of fourteen — James B. Jamie, as he is called, gives every promise of a strong, vigorous, intelligent manhood.

Mrs. Scott is a New England woman of rare culture and refinement, whose high ambition in life has been to create and maintain a happy home for husband and children. That she has well performed her whole duty is attested by the love of her family and the kindly regard of her neighbors.

In his professional life, our brother Scott had a high regard for the ethics of the law and of its practice. A statement made by him to the adversary lawyer, or to the court, respecting a case pending or on trial, could always be relied on with absolute certainty. His word was his bond.

Mr. Scott had the rare faculty of being a good "jury lawyer" and a good "court lawyer"; that is, he was equally and remarkably good in the presentation of a law argument to the court, and in an address to the jury.

In Kansas, Mr. Scott was always interested in politics as a private citizen, but with two exceptions declined to accept office. He was elected to the Legislature at the general election in 1882, and served with marked ability as a member of the House of Representatives for the biennial period then next ensuing. He was one of the delegates from this State to the last Republican national convention, which nominated Harrison.

Mr. Scott's practice at the Emporia bar was always large. He was interested in many important cases, among them the noted Walkup murder trial, in which Mr. Scott, assisted by Hon. Thomas Fenlon, of Leavenworth, secured the acquittal of their fair client, Mrs. Walkup, who was charged with the murder of her husband by poisoning. His last professional services consisted in an ap-

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pearance before the Supreme Court of the United States and oral argument in the Pullman car taxation case, in which the Pullman Palace Car Co. is seeking to obtain immunity from the taxation of its sleeping- and drawing-room cars engaged in making regular trips on the railroads in Kansas. Mr. Scott was associate counsel with the Attorney General in behalf of the State of Kansas in that case. This was on March 5, 1890. Mr. Scott was not well at the time. Very shortly thereafter he became worse, and so continued till his release from suffering by death.

I have not attempted in this paper any extended critical analysis of the character and attainments of our gifted brother Scott. My object has been simply to pay the tribute of a friend to his memory.

May Providence tenderly guard and protect the wife and children of our deceased brother.

G. F. Little paid the following tribute to the memory of Herbert J. Humphrey:

Gentlemen of the Kansas State Bar Association: It is with a feeling of sorrow that we come here to-day to pay tribute to the memory of the dead. The rush and roar of the great world are going on all the same outside of these walls and beyond our narrow circle, but here we halt for a few minutes, and here we enter each with the other to perform the last sad rites of love and grief for our friend and professional brother, who has passed from this world forever.

The custom of honoring the dead and of making a record of their virtues is as old as human history. It is an instinct of the heart of man, whether civilized or savage.

The civilized races of the earth give the names of those they honor to the permanent records of their country, and to the keeping of marble and brass.

It is for this reason that the influences of our lives are of such vast importance. They rarely, if ever, are allowed to wholly perish. We see them no more; their voices are hushed; their bodies turn to dust, but we gather what they did and said in their lives; we treasure up everything in a consecrated urn, and thus perpetuate their influence upon ourselves as long as we live in this world.

Something of this kind we are to do on this occasion.

The leading circumstances of the life and death of Herbert J. Humphrey are well known to those about me, yet I will venture to dwell upon them briefly, that we may place a proper estimate upon his character.

But a few weeks ago there was a law firm in the beautiful city of Hutchinson, as well and favorably known as any other, where the business of our profession was transacted from day to day. That firm has been dissolved. The books are closed. No notice, in the ordinary way, in the newspaper, announced the termination of a partnership. A summons came from the world beyond, and the junior partner left the office, to return no more forever.

And now Herbert J. Humphrey peacefully sleeps in our beautiful cemetery, where gentle hands have laid him, and where the flowers of spring-time will

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bedeck the lowly hillock, and the tears of love will bedew the turf which will grow nowhere else so green.

Herbert John Humphrey, eldest son of Judge James and Mrs. Humphrey, was born January 16, 1863, in the town of Manhattan, Kansas, hence was at the time of his death twenty-seven years, six months and twenty-three days of age. At the age of seven years he was brought by his parents to Junction City, where they have since continued to reside. He early evinced the greatest aptitude in books at school, and made most remarkable progress, graduating from our high school in 1876, at the age of thirteen years. He was the youngest of the high-school alumni at the time of his graduation, and was largely instrumental in the organization of the high-school alumni association. His mind had run away from his body in the meantime, and his health had become unsettled. The next two years he played "out-doors," and grew and waxed strong. At the age of fifteen, in 1878, he entered the State University of Kansas, at Lawrence, freshman class. Always studious, attentive and industrious, he was not content to "go slow," but accomplished the full four-years scientific course in three years, graduating in 1881, at the age of eighteen years. He was the youngest as he was the tallest in stature, of a class of nineteen young men and ladies. He was always especially attached to his college class, by whom he in turn was held in highest esteem. Just a few days before his death he handed a class circulating letter, then in his possession, to a class-mate who happened to call on him, and to whom it should next be sent, with the assurance that he would forward his contribution in a few days—"just as soon as he should get able to write."

The next year he officiated as principal of the Junction City high school, and was very successful in the discharge of his duties. He took cold, however, and a severe spell of sickness left his lungs very weak, causing him to go in the fall of '82 to California, where he taught for a school year, returning to Kansas the following summer quite recovered in health.

He then undertook in earnest, the study of law, being admitted to the Davis county bar in the spring of 1884. He was always a student, naturally and also by reason of his superior training, a good reasoner, and from the first, made a real success of his profession.

In the spring of 1886 a vacancy occurred in the office of county attorney, and he was appointed to fill it. This he did so acceptably, that at the election that fall he was chosen to fill the office not only for the unexpired part but for the full term following, though running as a Democrat in a strong Republican county. He failed to accomplish a reëlection in 1888, however, it being a Presidential election year, though he maintained his great popularity and ran ahead of his ticket.

He continued to practice law in this city till the spring of 1889, when he went, on the opening of the Territory, to Guthrie, Oklahoma, principally for speculation, where he yet owns valuable interests. He soon returned to his old home, and, in company with his brother, James V., continued his law practice. He was married at Hutchinson, Kas., on September 16, 1889, to Miss Ellinor Whitelaw Houk, daughter of Judge L. Houk, of that city, and two months later moved to that city, forming a professional partnership with Judge W. M. White-

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law, a leading attorney of that county, and uncle to his wife. He applied himself assiduously, and was fast winning a name and fame in his new home. During his last campaign work, in 1888, he contracted a severe cold, which impaired his health considerably, and caused his physician and family much uneasiness. His constitution was quite undermined and broken. Some weeks ago he was taken with a very light attack of typhoid fever, which was at no time serious or severe, and which seemed to weaken him but little. For two or three days previous to his death he was able to walk about the house without assistance. On August 8, he had just returned to his bed from a cot upon which he had been lying in an adjacent room, and was sitting up talking, when he suddenly fainted. He was speedily restored to consciousness, only to appear to suffocate, and again pass into an unconscious state, from which he did not rally.

The private and personal relations which our young friend bore to his friends were dearer to them than all the glories of professional life. He inspired attachment, personal affection, to a greater degree than perhaps any young man I ever knew. Those who came in contact with him were drawn closer and closer to him as time moved on. He loved and cherished his friends, and held them as with hooks of steel through the short years of his young life.

He was gentle and tender in his sympathies as the gentlest of women. A deep vein of pathos pervaded his whole nature; tears started as he listened to a tale of suffering, and yet in connection with these gentle traits of character he had a courage as high and unquailing in the defense of correct principles as ever dwelt in the heart of man. He should have lived longer, for he loved this beautiful world, his accomplished, loving young wife, and the cherished friends from whom he has drifted so quietly away. The bright daylight of his young life has met the evening stars, and he is now taking his everlasting repose in the folds of eternal day, beyond the jurisdiction or influence of human courts or finite beings. But this is human life. It is ever thus with the children of men. The death admiral's squadron is ever anchored but a little way off, and we must not be surprised at any moment to see it spread its white sails and steer for the shore on which we stand, summon us to come aboard, and set sail for that haven of mystery beyond the confines of earth, from whence none return to relate the events of their voyage.

Mr. Humphrey was not a member of any orthodox church, yet he believed in the doctrines of the Christian religion. No one ever heard him speak irreverently of sacred things. He trusted in God. This was his hope. It is all there is for the children of men. But he has descended to the portals of the grave. It is proper that we should do as we have done here to-day.

And now we must, after this brief communion with our professional brother, conclude by saying: Brave and loving heart, nature's gentleman, farewell. The turf never wrapped a manlier breast, and a spirit more erect never entered the mysterious realms of eternity.

The following standing committees were announced by the President, D. M. Valentine:

Judiciary Committee—George S. Green, Manhattan; Frank

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Doster, Marion; Joel Holt, Beloit; L. Stillwell, Erie; David Martin, Atchison.

Committee on Amendments to the Laws—J. C. Strang, Larned; J. B. Clogston, Eureka; Ira E. Lloyd, Ellsworth; J. W. Green, Lawrence; Ed. S. Waterbury, Emporia.

Memorial Committee—H. Whiteside, Hutchinson; J. W. Sutherland, Neodesha; T. S. Haun, Jetmore.

The President also appointed the following special committee to urge upon the Legislature the importance and necessity of relief from the delay of appellate litigation: David Overmyer, W. F. Rightmire, J. D. Milliken, H. A. McLean, Howel Jones.

The Treasurer of the Association made the following report:

TOPEKA, KAS., January 10, 1891.

To the Bar Association of the State of Kansas—Your Treasurer begs leave to make the following report:

1890.		*Amount.*
Jan. 13,	Amount turned over by the retiring Treasurer, Hon. D. M. Valentine	$135 00
	Amount collected in admission fees:	
April 4,	K. E. Wilcockson	5 00
4,	E. C. Little	5 00
	Amount collected in annual dues:	
April 4,	David Overmyer	3 00
4,	M. B. Nicholson	3 00
4,	D. M. Valentine	3 00
5,	L. B. Wheat	3 00
5,	T. W. Harrison	3 00
5,	L. Stillwell	3 00
5,	B. A. Seaver	3 00
5,	A. Bergen	3 00
5,	J. R. McClure	3 00
5,	J. C. Maltby	3 00
5,	Geo. C. Wilder	3 00
5,	W. Littlefield	3 00
5,	Abijah Wells	3 00
5,	S. S. Lawrence	3 00
5,	R. S. Hick	3 00
7,	T. P. Fenlon	3 00
7,	C. F. W. Dassler	3 00
7,	T. A. Hurd	3 00
7,	D. Martin	3 00
7,	Robt. M. Eaton	3 00
7,	G. W. Bertram	3 00
7,	J. C. Strang	3 00
7,	C. A. Lewis	3 00

1890.		*Amount.*
April 7,	C. Angevine	$3 00
7,	M. Summerfield	3 00
7,	E. W. Cunningham	3 00
7,	Chas. Monroe	3 00
7,	E. A. Barber	3 00
7,	R. M. Emery	3 00
7,	E. S. Bertram	3 00
7,	E. S. Quinton	3 00
7,	Geo. R. Peck	3 00
8,	J. H. Gillpatrick	3 00
8,	F. Doster	3 00
8,	J. Harvey Frith	3 00
8,	T. F. Garver	3 00
9,	E. A. McFarland	3 00
9,	T. N. Sedgwick	3 00
9,	R. G. Robinson	3 00
9,	James Falloon	3 00
9,	H. A. McLean	3 00
11,	Henry Keeler	3 00
11,	Omar Powell	3 00
11,	A. H. Ellis	3 00
11,	A. L. L. Hamilton	3 00
11,	F. D. Mills	3 00
11,	Robert Crozier	3 00
11,	J. F. McMullin	3 00
11,	B. P. Waggener	3 00
12,	C. A. Leland	3 00
14,	John C Sheridan	3 00
15,	Ira E. Lloyd	3 00
15,	David Kelso	3 00
15,	Scott Hopkins	3 00

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1890.		Amount.
April 15,	Geo. L. Douglass	$3 00
15,	Fabius M. Clarke	3 00
15,	Geo. C. Chandler	3 00
17,	C. H. Kimball	3 00
18,	Charles Bucher	3 00
19,	T. L. Bond	3 00
21,	Geo. Getty	3 00
23,	C. E. Benton	3 00
26,	John D. Milliken	3 00
28,	E. Hutchinson	3 00
May 1,	C. B. Graves	3 00
1,	Z. T. Walrond	3 00
3,	C. S. Bowman	3 00
5,	Henry L. Call	3 00
5,	A. J. Abbott	3 00
6,	John E. Hessin	3 00
6,	W. W. Guthrie	3 00
17,	J. W. Gleed	3 00
17,	C. S. Gleed	3 00
26,	J. D. McCleverty	3 00
June 9,	A. H. Horton	$3 00
10,	L. B. Kellogg	3 00
10,	Mrs. Kellogg	3 00
July 28,	W. B. Clarke	3 00
Aug. 14,	G. W. McCammon	3 00
April 17,	W. J. Patterson	3 00
1891.		
Jan. 5,	J. D. McFarland, for 1890	3 00
8,	John Martin	3 00
8,	Geo. S. Green	3 00
8,	S. O. Thacher	3 00
8,	Geo. H. Case	3 00
9,	W. T. Johnson	3 00
10,	Charles Hayden	3 00
10,	W. P. Douthitt	3 00
10,	Case Broderick	3 00
10,	J. D. Snoddy	3 00
Total amount received		$415 00

Your Treasurer has paid out on the orders of the Executive Council as follows:

Feb. 20,	Paid Thomas Ewing's board at Copeland	$10 75
Mar. 17,	Paid balance due Geo. W. Crane & Co	13 71
17,	Account book	50
April 7,	100 postal cards	1 00
7,	Printing same	1 00
May 10,	Reed-Martin Printing Co., 2,000 copies proceedings seventh annual meeting,	142 56
17,	C. S. Gleed, Secretary, stamps, clerk hire	26 50
17,	Kansas Publishing House, printing applications and cards	4 25
23,	Wm. Dignon, use of 300 folding chairs	30 00
Oct. 15,	Geo. W. Crane, circulars, reports, etc	11 75
Dec. 6,	Geo. W. Crane, 10,000 circulars	100 00
	Total	$342 02
Total receipts		$415 00
Total expenditures		342 02
Balance on hand		$72 98

Respectfully submitted. HOWEL JONES.

January 10, 1891.

TOPEKA, KAS., January 20, 1891.

To the Bar Association of the State of Kansas—Your Treasurer begs leave to make the following supplemental report:

Balance on hand last report, January 10, 1891		$72 98
Amounts collected since:		
Jan. 13,	S. Hayden	3 00
16,	S. B. Bradford	3 00
16,	W. R. Smith	3 00
Balance on hand		$81 98

Respectfully submitted. HOWEL JONES.

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TOPEKA, KAS., January 20, 1891.

To the Bar Association of the State of Kansas—Your Treasurer begs leave to make a second supplemental report:

Balance on hand January 20, 1891	$81 98
Collected from members for dues of 1890:	
B. F. Simpson	3 00
A. B. Jetmore	3 00
John Guthrie	3 00
D. S. Alford	3 00
L. Houk	3 00
John W. Day	3 00
W. R. Wagstaff	3 00
Total sum on hand January 20, 1891	$102 98

Respectfully submitted. HOWEL JONES.

The Executive Council made the following report of the work done and of the expense incurred in behalf of the judicial amendment, under the resolution of the Association at its last annual meeting:

At a meeting of the Executive Council early in September it was decided to make an earnest effort to secure the adoption of the judicial amendment. From the information that could be gained, it was then believed that, in spite of the disturbed condition of Kansas politics, the amendment could be carried. A plan of campaign was agreed upon, and the Chairman, with the help of such members as could be called in from time to time, proceeded to carry it out.

Five hundred circular letters were sent to the members of the bar in the several counties, to bring about an organization of the bar of each county for this purpose, and inclosing blanks to be filled out with certain desired information.

The principal difficulty in the way seemed to us to be that the farmers of the State would not understand the important public interest involved in the amendment, and that it would be defeated through prejudice. A special effort was therefore made to have it explained and advocated by the People's party press.

The *Advocate* of October 15th published a communication from Mr. Ed. S. Waterbury, very fully and fairly presenting the questions and interests involved in the amendment, and we purchased and distributed five thousand copies of this paper.

The *Advocate* of October 29th contained two editorials advocating the adoption of the amendment, and five thousand copies of this edition were purchased and faithfully distributed. The *Kansas Farmer*, the *Tribune*, and the *Jeffersonian*, in some one of their issues, contained communications that we deemed influential, and a smaller number of each of those papers was purchased and distributed.

Several thousand letters urging the importance of this matter were written to the newspapers of the State, to the public speakers on the stump, and to individual farmers and business-men—the names of five thousand of whom had been furnished to us by members of the bar in the several counties. We also

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issued an address to the people of the State, in the name of this Association, specially urging the adoption of the amendment. This address was printed in pamphlet form, and ten thousand copies of it were distributed.

As we all know, the result was failure; but this much of a detailed report is due the Association, in view of the fact that bills to a considerable amount were contracted in this work. The following is a detailed statement of this expense:

200 copies of the Kansas Farmer	$6 00
250 copies of the Tribune	5 00
1,250 copies of the Jeffersonian	41 00
5,000 copies of The Advocate (October 15th)	105 00
5,000 copies of The Advocate (October 29th)	105 00
10,000 copies of Bar Association address	100 00
Envelopes, paper wrappers and printed circular letters	53 65
Ed. S. Waterbury, expenses to Topeka and return	7 00
To postage stamps used in this work	90 00
Total	$513 65

Bills for all these amounts were presented to the Executive Council at its meeting on November 21st, were examined, found correct, and allowed.

It was ordered that the expense incurred in this matter be paid by the Treasurer.

The Executive Council also reported that at a meeting of the Executive Council on October 1st, Mr. Ed. S. Waterbury, of Emporia, was chosen a member of the Council to fill the vacancy caused by the death of W. W. Scott.

On motion of Howel Jones, the Association decided to give a banquet to its members at its next annual meeting.

The Association determined that no one should remain a member who, on proper notice, should neglect or refuse to pay his admission fee or the annual dues when called for. It was ordered that notice be given to each delinquent of the amount due from him, and that the names of all who do not respond to this notice be reported to the next annual meeting, for such action as it shall see fit to take.

Adjourned.

The addresses delivered before the Association at this meeting, except the extemporaneous address of the retiring President, appear in the following pages. The general discussion of subjects presented in the addresses is not reported.

C. J. BROWN, *Secretary.*

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ADDRESSES.

LIMITATIONS UPON APPELLATE COURTS.

BY ALBERT H. HORTON.

What I shall say in the short paper presented this evening will have reference to a condition, rather than a theory. If I were to theorize only, perhaps I would be willing to say, with the Jewish professor, "Whether the object of that right be a penny or a hundred dollars, let it be the same in thy eyes."

Kant, one of the greatest philosophers of the eighteenth century, said, "When a man has made a worm of himself, he cannot complain if he is trampled under foot"; further, "That the casting of one's right under the feet of others, is the violation of man's duty to himself." And therefore he draws the maxim, "Let not your rights be trampled under foot by others unpunished."

Dr. Rudolph von Ihering, a professor of law of the University of Göttingen, in his work on the Struggle for Law, insists "That the struggle for his right is a duty of every person having rights which he owes to himself," and also, "That the assertion of one's legal rights is a duty which he owes to society." He argues forcibly that "In the law, man possesses and defends the moral condition of his existence. Without law, he sinks to the level of the beast, just as the Romans very logically, from the standpoint of abstract law, placed slaves on a level with beasts." Further, that "In defending his legal rights, he asserts and defends the whole body of law, within the narrow space which his own legal rights occupy. Hence, his interest, and this, his mode of action, extend far beyond his own person. The general good which results therefrom is not only the ideal interest, that the authority and majesty of the law are protected, but this other very real and eminently practical good, which everyone feels and understands, even the person who has no conception whatever of the former, that the established order of social relations is defended and assured."

I may admit all of this and yet affirm, under the condition of things in this State, that the limitation of appeals is not only proper, but absolutely necessary. Whether the object of the right of any person in this State be a penny or $100, he has the opportunity to go into court, and ought to have that right; but whether he shall have the right to pursue his action through all the courts for the recovery of his penny or his $100, is another and a wholly different question.

For many years the statutes of this State have provided that no appeal can be taken from the final judgment of a justice of the peace on a judgment rendered by confession, or in jury trials, where neither party claims in his bill of particulars, a sum exceeding twenty dollars. At the present time, the statute

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also provides, concerning the jurisdiction of the Supreme Court of the State, that no appeal or proceeding in error shall be had or taken to the Supreme Court in any civil action unless the amount or value in controversy, exclusive of costs, shall exceed one hundred dollars, except in cases involving the tax or revenue laws of the State, or the title to real estate, or the constitution of this State, or the constitution, laws or treaties of the United States, or actions for slander, libel, malicious prosecution, or false imprisonment.

Therefore when I speak of the limitation of appeals or writs of error, I speak of a condition of things actually existing. The question arises, whether these limitations shall be further extended.

The Supreme Court of the State consists of three Justices, and is assisted by three Commissioners, and is energetically and laboriously striving to do the appellate legal business for a State containing nearly 1,500,000 people. The work of disposing of the overburdened docket speedily, is simply impossible. The business of the court is nearly two years behind-hand, with 1,500 cases on the docket undisposed of. From January 1st, 1890, to January 1st, 1891, 892 new cases were filed. Between 600 and 700 cases are disposed of by the court yearly. The people of the State have lately had two opportunities, in the way of proposed constitutional amendments, to increase the membership of the Supreme Court, and thereby increase its working force, with a full knowledge of the consequences, if the increase were denied. Both of the proposed amendments have been voted down by immense majorities. The people are clearly opposed to any increase of the present Supreme Bench. They have spoken twice, clearly and emphatically. Whether, considering this vote, the Legislature would feel warranted in establishing intermediate courts, I cannot say. It is doubtful, if the people are opposed to increasing the membership of the Supreme Court, whether they will be willing that new courts be created. If no intermediate appellate court is to be established, then the condition of things presented is this: The membership of the Supreme Bench cannot be increased until a constitutional convention is called and the people adopt the new constitution which it may formulate. This may take many years — it will at any event take several. In the meantime, is there to be no relief? Are all proceedings in the courts to be continued in the slow manner as now prescribed by the statutes? If so, the docket of the Supreme Court will continually increase, and in a short time, instead of being two years behind, it will be three or four. This will result in a denial of justice. Under these circumstances, under the conditions thus presented, is it not better to have a further limitation of appeals and of proceedings in error?

Many of the cases commenced before a justice of the peace result from petty quarrels among neighbors, which ought to be settled solely by arbitration. I refer to differences over accounts, fences, damages to crops by stock, identification of hogs, cattle, and similar controversies. Would it not be better to prohibit all appeals in civil cases in jury trials before a justice of the peace where the amount involved, exclusive of costs, does not exceed $50? Then the procedure before a justice of the peace might be amended so as to forbid a defendant appealing to the district court in any case where he willfully refuses to

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make his appearance before the justice, when properly served. As the statute now exists, a defendant may appeal from the final judgment of a justice of the peace, although he purposely refuses to appear, after being duly summoned. Then, again, ought not the limitation of proceedings in error in the Supreme Court be extended so as to prohibit any civil action being taken to that court, if the amount or value in controversy, exclusive of costs, does not exceed $250 or $300, unless within excepted cases? I think, in the present condition of the docket, such legislation may be defended. If it be said that the party who has the right to a penny is entitled to the same proceedings for the establishment of that right, through all the courts, as the party who claims $300 or $1,000, I answer, that the statute already refuses this right. All legislation is more or less in the way of compromise. While it is true that the controversy over a penny or $100 may involve as important a legal point as one involving $300 or many thousands of dollars, yet this is not always the case, and may be said generally not to be the case. If the limitation were extended to $250 or $300, exceptions could also be made. The statute might provide that any case, however small the sum in controversy, could be taken from the district court to the Supreme Court upon error, if the district judge should determine in writing that the point to be decided would add something of importance to the jurisprudence of the State. Then, instead of bringing a bulky record containing all of the proceedings of the inferior court, the district court should be authorized to state the point in writing to be decided; the Supreme Court to pass only upon the legal question thus submitted. In many cases proceedings are instituted in the Supreme Court of the State upon error, where the only legal questions in dispute are matters of evidence. When such cases involve only small sums of money, other more important cases should not be delayed until such cases can be determined. I know it is often said that if a case brought to the Supreme Court simply involves an old or established principle, it can be easily decided. This is true, so far as writing the opinion; but before it can be decided, the case must be assigned for hearing, briefs must be filed, oral arguments be heard, if one is desired, and then the chances are that a large record must be examined. These cases are the drift-wood of the court, but they stand in the way of other cases and of other suitors. With increasing population, increasing railroad facilities, increasing commercial transactions, increasing inventions, and the increasing activities of life, litigation, instead of lessening is also increasing. The courts all over the country — state, appellate, and federal — are blocked with business. There must be some sifting. Even among private suitors, important cases should have precedence over those of less importance. The old way has been to call for more judges, to establish more courts, to increase the expenses and the burdens of the people by additional taxes. It seems to me it is time to try another remedy. To limit appeals. To limit proceedings in error. To limit the multiplication of opinions and reports. I would say that no appeal should be taken from the final judgment of any justice of the peace to a district court, unless $50 is involved. I would have the justices of the peace, so far as possible, settle finally all the neighborhood controversies, disputes, and differences. I would limit proceedings in error from the district court to the Su-

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preme Court in all cases where the amount involved, exclusive of costs, is less than $300, excepting in cases where the point to be decided would add something of importance to the jurisprudence of the State. It is well enough to theorize and talk of abstract rights and abstract duties, but it is better to be practical, to look at existing conditions, and to determine what is best under all conditions surrounding the situation. No sensible person who has dropped a dollar into a stream will give two dollars to get it back again; yet suitors, with no desire to establish any great principle, or any great question of right, but solely on account of their mania for litigation, the innate love of wrangling, or the irresistible desire to inflict punishment upon others, even when it is certain they will have to pay for it, create litigation where the questions of law involved are insignificant.

Every lawyer knows that the sure prospect of having to pay dearly for victory does not keep many persons from suing. How frequently it happens, that the attorney who explains to a client the badness of his case and attempts to dissuade him from suing, receives for answer, "Bring suit, cost what it may."

Is the State, or the people of the State, under any duty, moral or legal, to furnish such persons an opportunity to gratify their passions or to disturb the quiet of a community? Unless one has carefully examined the reports of the State, they will be surprised to find how many cases of trifling import are transferred to the Supreme Court. I looked over the cases in the 41st, 42d and 43d Kansas Reports this morning. These were all published during the year of 1890. In the 41st Kansas, 147 cases are reported, 30 of which involve sums less than $300. In the 42d Kansas, 130 cases are reported, 21 of which involve sums less than $300. In the 43d Kansas, 157 cases are reported, 31 of which involve sums less than $300. The cases reported in these volumes involving sums less than $300 are, therefore, one-fifth of the cases reported therein. If the limitations proposed were adopted by our Legislature, 300 cases on the overburdened docket could be disposed of at once. If the proposed limitations were acceptable, the overburdened docket would be gradually relieved. Then the cases which would add something of importance to the jurisprudence of the State would be rapidly disposed of. Then, instead of being two or three years behind-time, the court would be up with its docket, and substantial justice would be speedily meted out to all suitors. I think the suggestion of the limitation of appeals and the limitation of proceedings in error worthy of serious consideration by the members of the bar and bench, and also by the members of the present Legislature.

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CONCILIATION AND ARBITRATION.

BY JOHN GUTHRIE.

"Peace hath her victories
No less renowned than war."
— *Milton.*

Mr. President, Gentlemen of the Bar — Ladies and Gentlemen: The best thought of this age does not estimate the deeds of destruction and conquest of Cæsar as entitling him to the gratitude of mankind, but his great achievement was that he organized Europe. His bridges, his roads, his system of jurisprudence, his coinage, his calendar, and other similar means, instrumentalities and facilities for promoting the industries of peace, entitle him to greater fame than his deeds of conquest.

William the Conqueror completed, or rather advanced very far towards completion, the social organization of England, and from this system, so organized by him, the institutions and laws of England and this country sprung. And even Napoleon — the true and proper memorial of his career is the successful working of his institutions, the systems and codes which he perfected and introduced into the social state, and not the brazen column formed from captured cannon which stands in the Place Vendôme. It may be true that deeds of destruction and the conquest of neighboring States by warriors and military chieftains command the applause of the venal and unthinking vulgar mob, but the intelligent, industrious and virtuous people are concerned about the social system that will promote intelligence, stimulate honest industry and protect society against the wrongs and misfortunes of the body politic.

Cortez, the Castilian soldier of fortune, invaded and conquered Mexico with the torch of destruction in one hand and the cross of the Christian religion in the other; but this age disapproves, deprecates and repudiates his treachery, cruelty and inhumanity while prosecuting his campaigns for the conquest of the empire. The social system of the dynasty of Montezuma was founded upon the religious doctrine that human sacrifices were necessary for the purpose of propitiating the gods, and hundreds of unoffending men women and children were annually sacrificed in the temples, on the altars, to appease the deities and save the people from pestilence, famine and destruction. Cortez, by his treachery, cruelty, and wanton destruction of human life and property, conquered the empire. Thereupon he reorganized the social system of the government, and with the aid of the ever-faithful, pious and meek fathers of the church, set up the cross and established the Christian religion. If his name is entitled to a memorial, it is for the aversion he entertained for a religion that required the sacrifice of human beings for the propitiation of the people's gods, and his devotion to the meek and humane teachings of the Christian church.

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The social conditions of every state and country are either normal or abnormal — or, rather, natural or artificial; and the laws and methods of administration thereof are the results of this social condition of society. In a commonwealth where society is settled and undisturbed by extraneous environments, the laws enacted are such as meet the social conditions, wants and desires of the state, and such laws are the crystallized sentiments or convictions of those who make the laws enacted into statutes. But when a state or province is conquered and the conqueror forces upon the people laws that are oppressive, or that are distasteful to the habits, education or religious convictions of the people of the conquered territory, the social conditions are abnormal or unnatural, and are distasteful and obnoxious to any people. It does not follow, however, that the new social conditions may not be adopted by the conquered state. When Cæsar conquered Europe, he organized its social conditions, and the people in turn accommodated themselves to the new order of things. The social revolution was not effected by force only. He gave to his people a humane and enlightened code of laws; he set the people to building roads, canals and bridges for their convenience, profit, and support; he devised a system of coinage, and he gave Europe a calendar; he encouraged the arts, literature, and sciences. As a military chieftain, he gathered up the warring and contending states, provinces and tribes of Europe and established the Roman Empire, and promoted the pursuits of industry and peace; and by these means he succeeded in organizing the social condition of Europe.

William of Normandy came over to England with his horde of followers and conquered the Saxons, Danes, and Celts; he confiscated the soil and reduced the inhabitants to a condition of vassalage, and reorganized the social condition of the country; he made grants of the land to his military officers and followers, *service de chevalier*, and introduced new methods of civilization among the native population; and from the reign of William has sprung the civilization of all the English-speaking people. The social system existing among the early Britons, before the conquest, has almost disappeared, and a robust, enlightened and virtuous civilization has taken the place of the old social conditions. As Cæsar built Rome, so Napoleon created modern Paris on the ruins of the old city. He changed the social system of the empire by encouraging the arts, literature and sciences, and promoting the pursuits of peace; for the peasants, he created a market for the product of their toil; and he organized armies for the chivalric nobility and the people who did not care for the pursuits of peace. Napoleon gave to the empire a code of laws known as the "Code Napoleon," recognized by all peoples as wise, just, and humane; and by these methods the social system of France was revolutionized and reorganized — a social system that is loved and revered by the French people, wherever they may dwell.

Whatever may be said of the founders of the various social systems, it is agreed that the development of the State idea rests upon the great truth, that the State or Nation is not an accidental collection of human beings who are so stupid or selfish that some superior power must step in to regulate them by law; but, on the contrary, the State is a great, corporate, organized being, whose indi-

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vidual members are intimately bound together and must have government and rules of action, because it is impossible for humanity, individually or collectively, to live without them. Every action in the State, in a greater or less degree, affects all its members. This being so, there is a common interest which imposes in return a common duty to all. The great and delicate duty of the State is to regulate the actions and relations of the individual members of society with reference to one another; and whether the law-giver be the Emperor of Rome, William of Normandy or Napoleon the First, or whether the country be the States of Greece or the American States, the delicate and intricate duties are the same.

When these legislative duties are determined, the next step, no less delicate, difficult and important, is the method of administering the laws and promoting the safety, protection and peace of the social compact. In a recent paper prepared for and published in the *Forum*, by Jules Simon, one of the foremost living statesmen of France, on the stability of the French Republic, he observes that "One of the most necessary and august functions of government is the administration of justice." How justice should be administered and what methods should be employed to secure that end, has engaged the best thought and deepest concern of the ablest and wisest jurists, statesmen and philanthropists for ages, in every civilized country. It would seem that some reforms, changes or modifications should be devised by the Legislature of this State by which actions at law might be cheaper and more simple, and at the same time discourage wanton, wasteful and vexatious litigation. But the methods that shall be employed to accomplish this desirable and beneficial result are committed to the legislative power of the State. All thoughtful men know, and every honest man will admit, that a law-suit is only a combat between the actors, and that the sword and shot-gun have been supplemented by intellectual methods — more refined, doubtless, but no less a combat, with all its consequences of bitterness and neighborhood rancor, that the sword, war chariots and blunderbuss methods imply.

Professor Theodore D. Woolsey, in his work on Political Science, speaking of the judicial department of the State, observes that "What the divisions in a judiciary system ought to be, it is not our province, nor does it lie within our experience, to determine; we only suggest the following considerations:

"1st. While law ought to be cheap, some bounds should be set to litigiousness; hence fees and costs ought to be large enough to deter one who is inclined to his rights unduly, and if a person appeals to a higher court against the advice of the judge, and fail on the appeal, that ought, perhaps, to be an increase of court dues.

"2d. Courts of conciliation for the trial of petty cases are of great importance in protecting the rights of the poor, and, indeed, of all classes of society; these cases need generally only a simple statement of the case by the parties, without the help of advocates; the facts are for the most part admitted, and the aim of the court is either to render exact justice in clear cases, or to arbitrate in cases that are not so evident. Multitudes of cases are thus settled

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which the complainant would never, on account of the expense, bring before the ordinary courts. But the great advantage is, that a feeling is diffused through the humbler classes that society and its arrangement exists for their protection, and not for that of those only who can employ an advocate. Such courts, in different shapes, are now spreading abroad through Europe, and deserve to be diffused over all parts of the civilized world."

Dr. Lieber, in his work on Civil Liberty and Self-Government, observes, that wherever courts of conciliation have been tried in modern times, they have been found of the greatest benefit to the people.

Nearly one hundred years ago Christian VII, King of Denmark, by royal ordinance created courts of conciliation. This ordinance created commissions for hearing the complaints and differences between the King's subjects. The commissioners were required, before entering upon their duties as such, to take an oath to exert all the influence in their power to promote amicable adjustments between the parties in every case that should be brought before them, and to endeavor honestly and zealously to effect this end to the best of their judgment. It was also made the duty of all other officers of the government to use their influence in favor of those tribunals, and to take seats upon the commission when other official duty would permit, and upon all occasions to promote harmony between the parties at variance. All causes, in general, whether concerning property rights or debts, were subject to this commission; except (1) actions respecting bills of exchange, and (2) demands arising out of dealings with bankrupt estates, or estates under administration or trustees. The commissioners were required to assemble once a week, except in Copenhagen, where the commission was constantly in session; and anyone who had a grievance to lay before the commission was required first to notify his adversary of the time when the complaining party would appear before the commission. The party summoned was required to appear, unless he could give a justifiable excuse, and in that case the absentee might send some good man in his stead, empowered to treat for and reconcile the difference; but it was expressly prohibited the parties to take a lawyer before the reconciling commission. No cause, except those heretofore mentioned, could be commenced in the law courts of justice unless the plaintiff produced a certificate from the commission that an effort had been made to reconcile the difference before the reconciling tribunal and failed.

This is a very brief and imperfect synopsis of the provisions of this ordinance. In justice to this good prince, I quote a few lines from the preamble of the royal ordinance, showing his purpose and intentions, viz.: "Whereas, it is incumbent on us to prevent, as far as possible, unnecessary and expensive law-suits between our beloved and faithful subjects by the interposition of mediators to effect an amicable adjustment between contending parties," etc. Then follows the royal ordinance.

I have endeavored, with the limited time at my disposal, to ascertain the results of such humane legislation. From an official report, published in Denmark for 1823, it appears that in that year thirty-one thousand cases were brought before the courts of conciliation. Twenty-one thousand of these cases

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were settled in this manner, and about six hundred of the remaining ten thousand were abandoned by the parties; and of the remaining nine thousand four hundred and twenty-six, only two thousand three hundred and fifty-five were tried and determined by the law courts, and the balance, seven thousand three hundred and seventy-one, remained undetermined. It will be seen that sixty-six per cent. of all the litigation arising in Denmark was settled by the courts of conciliation for that year, and that the courts of law tried and disposed of about ten per cent. of the legal controversies between the king's subjects. This system of judicature was then, however, confined to Denmark proper, comprising Jutland and the islands. I am not able to say whether these laws have been extended over the provinces and dependencies of Denmark.

The Danish writers speak with great pride and satisfaction of the success of these courts of conciliation. It is, however, contended that these courts have been less successful in France. There are perhaps two reasons why this system has been more successful in Denmark than in France: in Denmark these courts are held by a distinct class of magistrates, while in France the ordinary *juges de paix* hold the courts of conciliation. Their jurisdiction is much more limited than that of the Danish courts. In Denmark, it will be observed by an examination of the sixth section of the king's decree, that it was enjoined upon the members of the government or officers of the crown to use their influence in favor of these courts, and to take seats in these courts when official duty would permit, in order to promote harmony between parties at variance. I have not been able to find any public expression that would authorize me to say so much for France. But these courts were established in France in 1790, and were afterwards perpetuated in the code. The other difference in the social conditions between Denmark and France is, that in the former country the population is mostly rural; there are no large cities, and the great majority of the people, in the country, on farms or in small villages, are engaged in the pursuit of agriculture, while in France the country is densely populated, and perhaps a majority of the people live in large cities. Their pursuits, habits, education and methods of thought are different. An American trader, some years ago, speaking of the administration of justice in Norway, said that "In every school district the freeholders elect a justice of the court of conciliation. Every law-suit must be brought before this justice, and the parties in person (as no lawyer or attorney is allowed to be present in this court) appear and state their mutual complaint and grievance at length. The justice carefully notes down all the facts and statements of the plaintiff and defendant, and after due consideration endeavors to arrange the matter, and proposes for this purpose what he considers to be perfectly just and fair in the premises. When judgment is accepted by the parties, it is immediately entered in the court above, which is a court of record; and if it is appealed from, the case goes up to the district court upon the evidence already taken in writing by the justice of the court of conciliation. No other evidence is admitted. If the terms proposed by the justice are pronounced just and reasonable, the party appealing has to pay the cost and damage of appeal. More than two-thirds of the suits commenced are settled in the courts of conciliation, and of the remaining third not settled, not more than one-

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tenth are ever carried up." Those whose contention it is that courts of conciliation are not successful assume that "a man having to play at philanthropy is *ipso facto* disqualified for the gratuitous sacrifice; the unbought grace of it is gone."

"At sight of legal ties,
Spreads its light wings, and in a moment flies."

But I am of the opinion that upon examination of the institutions in all countries where the Roman or civil law has prevailed for the many centuries since Rome was mistress of the civilized world, it will be found that courts of conciliation, in some form, have been and are now important elements as the means or methods of administering the law.

There have been varied but unsuccessful attempts to induce Parliament to introduce similar tribunals in England. The most noticeable effort was made about sixty years ago by Lord Brougham. He pleaded the cause of these courts and laid siege to lords and commons, but in his gallant and brave struggle was rewarded only with defeat. The proud and haughty Briton has never been able to understand that an honest difference between two of the king's subjects might be honorably compromised before a court authorized to settle difference when practicable. The code commissioners, composed of learned lawyers, at one time reported to the Legislature of the State of New York a provision for courts of conciliation, but they could not impress the Legislature with the wisdom and policy of such measures, intended to promote the interests of peace and discourage wasteful litigation.

The Legislature of Pennsylvania, in 1883, for the purpose of settling differences between employers and employés engaged in the iron, steel, textile fabrics and coal trades in the State, resulting in strikes and lockouts which so frequently paralyzed these great industries, established courts of conciliation. The statute provides that the presiding judge of the courts of common pleas, or the presiding judges thereof in chambers, in the counties of Philadelphia and Alleghany, and of each of the other judicial districts of the commonwealth, shall have power, and upon the presentation of the petition or agreement between the parties, it shall be the duty of each of them to issue a license or authority for the establishment of tribunals for the consideration and settlement of disputes between employers and employés in different trades or pursuits. The tribunals may be created upon the application of either the employers or the employés. Where the petition is presented to the presiding judge of the court of common pleas by the employés, it must be signed by at least fifty workmen who are citizens of the United States and have been residents of the judicial district for at least one year, and have been engaged in some branch of the trade they propose to represent for at least two years. If the petition is signed by employers, the persons signing it must be citizens of the United States, and shall be, and shall have been actually engaged in one of these industries within the judicial district for at least one year, and shall each employ therein at least ten workmen of these classes of trades. The presiding judge appoints three persons for each of these tribunals.

The constitutional convention of Indiana held in 1850, for the purpose of

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submitting to the electors of the State a revised and amended constitution, incorporated into the organic law a provision for courts of conciliation. After the adoption of the constitution by the people, the Legislature of 1852, for the purpose of providing the necessary legislation to carry this provision of the constitution into effect, passed an act entitled "An act to establish courts of conciliation, to prescribe rules and proceedings therein, and compensation for the judge thereof." The act provides that any person claiming to have a cause of action against another for libel, slander, malicious prosecution, assault and battery, or false imprisonment, may serve on him a written notice, briefly but informally, of the alleged cause of action, and require him to appear in relation thereto before the court of conciliation of the county where the notice is served, at a place and time therein stated, not less than five days from the time of service. At the time specified in the notice, the parties appearing must be received by the judge apart from all other persons, except that an infant must be attended by a guardian and a female by her husband or friend; and thereupon it is the duty of the judge to hear the allegations and explanations of the parties and inform them of their respective rights, to endeavor to reconcile their differences, and advise such compromise of the claim in controversy as may be deemed just.

If reconciliation between the parties be effected, a memorandum thereof, stating the nature of the controversy or alleged cause of action, the appearance of the parties and the fact of the reconciliation, without specifying the terms thereof, unless it is agreed by the parties to specify them, and this must be entered in a book of record to be kept by the judge, and signed by the respective parties. The reconciliation thus effected is the final determination of the matter in controversy, and is a bar to an action by either party in respect thereto. The judge may enter a judgment for either party against the other if the parties agree to settle in this way, and this judgment may be enforced like other judgments.

If the plaintiff brings an action at law without serving a notice on his adversary to appear before the court of conciliation, and recover damages, he cannot recover costs of the action; or, if a plaintiff having notified his adversary to appear before the court of conciliation, and he failed to appear, then the complaining party may bring his action in the court of law for the recovery of damages; but if the complaining party fails in his action the defendant cannot recover costs. I have been unable to find any statistics showing what these courts have done for society in the State of Indiana. That State, like this, fails to collect statistics concerning litigation like France, Germany, Sweden, Norway, and Denmark. We make commendable efforts to ascertain the number of swine, cattle, and other farm products, the number of school children, taxable property and municipal indebtedness, but our legislators have not cared to consider the useless and wasteful litigation continually going on in society, and provide a remedy if practicable. In Indiana the statute, however, made it the duty of the judge of the common-pleas courts to hold these courts of conciliation, as is the case in France. These judges were generally chosen from two or more counties, and this made it difficult and inconvenient for parties having

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grievances to meet their law judge. Everyone knows that the judges of courts are usually burdened with the law-suits of litigants before them, and that such officers have little or no time to meet the parties having grievances against their neighbors. If these courts are to accomplish the great work of promoting peace and reconciling the differences between contending parties, the judge or commissioner must be ready at fitting times to hear the parties patiently and advise them with words of wisdom and kindness. These courts, it will be remembered, are held in Norway, Denmark and other continental countries by a special class of magistrates selected for their special fitness for the duties intrusted to them. These tribunals are successful in those countries. In France the duties are imposed upon the law judges, and opinion is not agreed that the law is so successful in the latter country as in the former countries; and, by parity of reasoning, it is doubtful whether the system would be successful in any of the American States where the law judges are required to hold these courts.

Whatever criticism may rightfully be applied to the social fabric of Indiana, it must be said, that by the wisdom of her legislation for more than fifty years, vicious and useless litigation has been discouraged, and the bar of that State has never suffered by this legislation. But on the contrary, the bar of that State has given directions, system and unification in all the great legal reforms. It is the theory of the legislation of that State that persons should not in the heat of passion, or when smarting under real or imaginary wrongs, be encouraged to rush into a law-suit. If an action is tried before a justice of the peace, or other county tribunal, and either party appeals to the circuit court, and the appellant fails materially to change the result, such appellant must pay all costs occasioned by the appeal. If an appeal is taken from the circuit court to the supreme court and the appeal is without merit, it is made the duty of the appellate court to punish the appellant, by assessing damage in favor of the appellee. The Legislature has afforded provision for arbitration and award, and while this code might be improved, it is far in advance of some other States. By these means vexatious and wasteful litigation is discouraged in some degree. The State that will, by its legislation, do so much for society, is entitled to wear a crown of laurel.

By an examination of laws enacted by the Legislature of this State, very few obstructions will be found intended to check, discourage or hinder anyone from applying to the courts in haste or engaging in ill-advised, wasteful or vicious litigation. Provision is made by law to discourage parties from bringing action against cities until the aggrieved party has exhibited his claim against the city by presenting to the mayor and council and giving the city authorities an opportunity to adjust or reject the claim before an action is commenced; and when a party has a legitimate claim against a railroad for stock killed or injured by operation of the railroad, the claimant must make demand for payment on certain agents, and then he must give the corporation thirty days to determine whether it will pay such claim or reject it, before an action can be brought by the claimant. Then again, provision is made for fence-viewers to be called upon by either party to determine certain controversies arising out of partition

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fences. There may be some other provisions along this line, but they have not occurred to my mind.

These provisions of law are in the direction of good government and morals; but why should the citizen be vexed by a law-suit in a court of justice more speedily or summarily than a city or a railroad company? The law clothing the fence-viewers of the township with jurisdiction to settle certain controversies arising out of partition fences is wholesome and wise, so far as it extends. But this law should invest these officers with jurisdiction and authority to settle all controversies arising out of farm fences, and the law should be made so plain that the officers would be likely to understand their jurisdiction and duties, and so elastic that, when it appeared in a court of competent jurisdiction that justice had been done, that the court could say to the parties, "Justice has been done between two neighbors, and we will not hear your learned counsel, to enable you to escape from the just award of your neighbors, whose duty it is to settle your difficulties."

Along this line of thought I must say something for arbitration and award. It would seem to be paradoxical that while both the common and civil law favored arbitration as a means of settling difficulties between parties, there is probably not a well-considered and wise code on that subject in any State of the Union; and it seems absurd that while it is a fact that the best thought of our times favors the principle of arbitration, the State Legislatures fail and neglect to devise, create and enact into law any code on that subject equal to the demands of the age. Publicists write ably and learnedly on this subject for magazines, and editors of the public press discuss its merits; politicians, before election, eloquently portray its beauties and benefits, but when the State Legislature meets nothing more is said about this subject until the next election. The people are deceived and governed too much by such cheap methods. The truth is, that it is easier to talk about a code providing for arbitration to meet the needs, wants and conditions of society, than it is to create such a code. If such a code should be created and enacted into law by any of the States, others could readily borrow and appropriate it. A code designed for the satisfactory administration of the law by this method and meeting the wants and conditions of society must be simple in its creation and construction; it must be so framed that the litigants will feel that the award will secure to them the ends of justice; that the reviewing courts will not be compelled to set aside awards for slight irregularities on the part of the arbitrators or parties to the action; and that when the award is made, that will be the end of the controversy; and the trial of actions before these tribunals must be made as inexpensive as possible. It may be safely said there is no such code in any of the States, and it may be as safely said that there is no man in this State who can prepare a code on this subject to meet the wants and requirements of society in a day, week, or month. Whoever prepares a code on this branch of the law must have time for reflection, and he must be a man of ripe experience, learned in the law, and of great industry.

I need not say anything about our present legislation on this subject. No one is acquainted with its devious ways, and it seldom secures a victim in its treacherous meshes. But we need not despair that some lawyer of learning,

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experience and industry, will be found in this State equal to the creation of a code on this subject. The Legislature may reject such code when prepared, and the author may be humiliated in this way for his reward, but the legislation will not be defeated in this manner. The treaty concluded at Washington, some years ago, between Great Britain and this country, so completely committed the contracting parties to the principle of arbitration and award, that every civilized nation has felt its salutary effects. This treaty settled the international doctrine that nations, before they appeal to the arbitrament of the sword, must submit their differences to the neighboring powers, and no empire, kingdom, or state, in this age, can afford to go to war against the counsel or advice of the other powers. The same principle permeates and pervades the social fabric of every state. Public sentiment is a great law-giver; it may be virtuous, generous and intelligent in its trend, or a cruel tyrant; but it is the alpha and omega in a republican or democratic government.

The time will never come when courts of justice may be closed, or the services of the legal profession dispensed with. Courts and lawyers will always be as essential to the social conditions, as the profession of medicine and surgery or the scientists who unfold the mysteries of creation and apply the forces of nature to the use of mankind. The government of every country is directed by men learned in the law. The imperial government of Rome required the services of seventeen of its ablest jurists for the period of three years to prepare the Justinian Institutes. The National and State governments of this country are under the direction and care of lawyers. The education and life-work of the profession fit its members for the wise administration of public concerns, and it is no disparagement to the members of other professions or vocations that this is so. It may be justly and safely said that the legal profession is the royal road of human activities. But every intelligent lawyer must admit that whatever benefits or wrongs any member of society is the concern of every other person in the State; and this being so, there is a common interest which imposes in return a common duty to all. The state of the law that invites wasteful or vicious litigation is a wrong to every member of society, and it is the common duty of all to promote that legislation which will secure the best results of society. There is no reputable lawyer who cares for the class of litigation that should be thus discouraged; indeed, it is the experience of the bar that such litigation is a burden to the legal profession. The lawyers can better afford to employ their time and great talents to causes that arise from the activities of business transactions and require great labor and ability to extract the facts from clients and apply the law — such controversies as cannot be settled by courts of conciliation or arbitration. Judge Blackstone, in his excellent Commentaries, observes that "The common law has ever had a special care and regard for the conservation of the peace; for peace is the very end of civil society."

I believe that every fraternal society in the land makes provisions for methods of conciliation and arbitration between its members, and all of the various churches and ecclesiastical bodies forbid their members to engage in the conflicts and strife of actions at law until all peaceful efforts have been exhausted.

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These social forces, by their fraternal teachings and benefactions, control the social compacts of the State. Why should the State be less concerned about the welfare and happiness of the citizen? By applying methods along these lines, we obey the injunction of the Great Teacher: "Agree with thine adversary quickly whilst thou art in the way with him; lest at any time the adversary deliver thee to the judge, and the judge deliver thee to the officer, and thou be cast into prison."

COURTS OF CONCILIATION.

BY L. HOUK.

Mr. President, and Gentlemen: It seems to be a conceded fact at this day that the English-speaking peoples are descended from a prehistoric tribe or race, dwelling somewhere in Europe or Asia. Just where they lived, it seems impossible to say, and equally impossible, just when. They lived in unconsidered barbarism, and not even a legend has come down to us to tell wherein they differed from other tribes; but nevertheless, we know that they did differ. Their subsequent history proves that they possessed within themselves the form and potency of unlimited advancement and progress. As it has been said, they possessed superior intellectuality, enterprise, and migratory vigor. Under the influence of the last-named quality they divided themselves into separate tribes, and the more enterprising, turning their backs upon the land of their origin, moved westward, and, thrusting aside all other races which stood in their way, occupied the fairest portions of Europe. In the course of time, from barbarism they merged into semi-barbarism, from semi-barbarism into civilization, and from civilization into enlightenment. Through all these changes, their laws and political institutions kept pace with every step toward the attainment of knowledge, wealth and empire.

From this great Aryan race, no other offshoot, as we flatter ourselves, has contributed so much to the world's progress as the Anglo-Saxons, and certainly no other people has been so jealous of the preservation of individual right. From the rude times when physical force was paramount and controversies were settled by duel or by wager of battle, through the successive stages of advancement when the king was the arbiter of the disputes of his people, and afterwards when judicial officers were appointed, who were, in their judicial capacity, independent of the sovereign, and finally, when juries of the vicinage were allowed, while the end sought to be attained was justice, everything was done in the forms and by due process of law.

No one would have thought of applying Fennimore Cooper's fine story of the Heidenmauer to an Anglo-Saxon people. It will be remembered that a bitter controversy sprang up between the mother church, as represented by a certain abbey situated in a Teutonic principality, and a powerful neighboring baron, as to

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the ownership and possession of certain broad and fertile acres of land. As the story goes, the churchmen, being averse to the arbitrament of the sword, and the baron being distrustful of the superior clerical knowledge of the cunning monks, and unwilling to trust peaceful arbitration, it was finally agreed that the whole difference should be settled by referring it to the god, Bacchus — a proceeding in which both parties would stand on an equal footing. Accordingly, at an appointed time and place, the reverend abbot and the baron appeared on a certain evening, attended by their respective followers, each prepared to do battle to the utmost of his ability for the cause which he represented. The preliminaries were few and simple, and were soon arranged. An unlimited supply of the rich vintage of the Rhine was at hand, and each competitor enjoyed a widespread reputation for his feats with the flowing cup. The terms were that they should be seated at table and that they should drink cup and cup alike so long as both could maintain their seats; when either could no longer maintain his chair he was to be declared the loser, and the fortunate possessor of the strongest head, the winner. Both parties exhibited prodigious powers of endurance, and all through the night the contest continued, but at dawn of next day the baron was under the table, while the doughty priest still maintained his position, and the church was the undisputed owner of the coveted land. Anglo-Saxons would not have deemed this due process of law.

The Anglo-Saxons at every stage of their growth have been remarkable for the respect and honor they have exhibited for the law, and its just and proper administration has at all times received due attention. While they were doubtless much indebted for their jurisprudence to the more polished nations which had gone before them, and especially to the Roman law, they were too eminently practical to depend very largely on the theories and speculations of learned writers. The great body of their laws of which we are in part the inheritors, was slow and gradual in its growth, and was evolved out of actual experience and practical wisdom. These laws and the modes of procedure adopted for their administration, being thus the results of growth and progress, and being so happily adapted to the wants of every age and every condition of society, we have come to regard with such profound veneration and respect that we have been little disposed to indulge in any speculation as to whether it would be profitable to make such changes as would render an appeal to the courts unnecessary in a large number of cases.

So well settled has been the conviction that our system of jurisprudence is the most intelligent and rational that could be devised for the settlement of disputed rights, that we have not taken time to consider whether it is always the wisest course when a party feels aggrieved and desires to enter the legal arena to engage in strife with his adversary, to interpose no obstacle to the gratification of his wishes, but to throw wide open the gates and bid him enter at once, rather than to provide, so to speak, a *locus penitentiæ* where he shall be required to appear along with the adversary, and where after both have stated their grievances and listened to the friendly advice of an impartial magistrate, counseling moderation and mutual concession and pointing out the long train of evils resulting from protracted litigation over trifles, they may give full sway

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to returning reason and make a friendly adjustment of their differences. We have taken it for granted that when men differ as to their respective rights and one desires to appeal to the courts, that he must be allowed to do so without let or hindrance, and that the controversy, being submitted to the law, must take its regular course, and then be determined without reference to the consent of either party.

If men were always disposed to heed the suggestions of reason and were never swayed by passion, and if they always counted the cost of litigation, this assumption might be well founded. In that case it would generally be fruitless to invoke the aid of conciliation, and nothing would be left but to let them fight out their controversies to the bitter end. But this is not a sound theory of human nature.

Litigants are of as varied characteristics as the varied types of humanity, and the motives which impel them and the litigation in which they engage, are as different; but as bearing on the question under investigation, certain general classes of litigation may be designated as coming frequently under our observation. Among these may be mentioned first, cases where the subject-matter is the breach of a contract or obligation to pay money where there is no serious dispute as to the obligation or its breach, but the real difficulty is the inability or unwillingness of the second party to perform his obligation. Second, where the subject of contention is important, where the principles of law involved are recondite or complicated and the facts doubtful or strongly controverted, where no moral obliquity on either side is necessarily to be inferred, and where even trained professional minds might deduce opposite conclusions as to the merits. And third, where one party by a cunningly contrived net-work of apparent facts and circumstances, supported it may be by suborned testimony, seeks to overreach and defraud the opposing party. In such cases as these, anything like conciliation would seem to be wholly futile.

But there are other cases, as where, first, parties have attempted to contract in writing, but have expressed themselves in terms so obscure and unintelligible that they separate without their minds having in fact concurred, and each carries away with him an understanding honestly differing from that of the other; and second, where the controversy is trifling — perhaps an unimportant trespass or the like — but where this paltry matter of dispute is swollen to larger proportions by the feelings of the supposed injured party, and afterwards to still larger proportions by fictitious allegations in the pleadings.

The trial dockets of our courts are largely padded with small appeals growing out of controversies of the character of the two last named.

At the last term of the district court of Reno county, 900 cases stood upon the docket for trial. Of these, quite a considerable proportion were unimportant appeals in which the action should never have been brought, and in which, if the parties had only paused beforehand, after giving time for the heat and irritation of the conflict to subside, and especially if the good offices of some judicious third person could have been interposed, who could examine into the probability or improbability of the assumed facts, and kindly but relentlessly expose the mistakes and sophistries of each side, and point out the inconven-

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iences and sacrifices necessarily to follow, and, not least of all, the obligations of good citizens to maintain the good-fellowship of neighborhoods and to avoid rancorous disputes which would have the opposite effect, in all probability very many of them never would have been brought.

In the very nature of things in a judicial trial the court can never assume the office of mediator, but must simply listen to the allegations and proofs, and decide accordingly.

As illustrative of the character of litigation of which I have been speaking, I recall one or two instances. B. and V. were neighboring farmers. Both were much esteemed by their other neighbors, and they were friends. V. sold B. a milk cow. B. upon trial of the animal was dissatisfied as to the quantity of milk afforded, and going to V. he urged that V. had warranted the cow to give a larger flow of milk, and as there was a breach of this warranty there must either be a rescission of the contract, or else V. must pay a certain amount of damages. V. promptly took the ground that there was no warranty, and that even if there had been the cow was in fact equal to all that B. claimed she ought to be. Both parties were naturally inclined to be irascible and combative, and the result was that B. promptly rushed into a justice court for redress. The prominence of the parties and the earnestness with which the strife was carried on attracted the attention of the surrounding country. Everybody who had ever heard either of the parties speak of the subject-matter of the dispute, everybody who was acquainted with the cow or her qualities, and everybody who had any acquaintance with the quality of milk cows in general, were summoned as witnesses. A trial followed in due course of time, and the defendant prevailed. B. was not cast down at his defeat, but by this time, being full of what the Latin poet calls the "*gaudium certaminis*," lost no time in appealing. The docket of the district court at the time being somewhat overcrowded, the case had to wait two or three successive terms before being reached and tried; but none the less each party promptly appeared at the beginning of every term with a great cloud of witnesses. The case finally came to an end, with the result that B. was again defeated, the costs adjudged against him being not far short of $1,000, while the original and actual difference between the parties might have been covered by $5 or $10. B. was seriously crippled pecuniarily by having to pay this amount.

But there was a sequel to this case. B. was represented in the justice trial by Judge T., a sort of lawyer who had recently immigrated into this State from the East, and was given to the most florid style of rhetoric, but was without any very exact knowledge of the principles of the law. After the trial by the justice, Judge T. demanded a fee of $10; this B. refused to pay, alleging that T. had volunteered; that his services had in fact proved of no value, and as the result had been disastrous as far as it had gone, T. had not earned any compensation. T. sued and recovered in justice's court. B. again appealed, and this case was pending for trial at the same time with the other, and was in fact tried a day or two later. Judge T. appeared in person, and in his concluding argument assured the jury in grandiloquent terms that he utterly despised the comparatively small amount of filthy lucre involved in the case, but as the defendant had introduced witnesses for the purpose of impeaching his veracity and also that of one of his

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witnesses, a niece, and a lady who he said had been presented at almost every court in Europe, that there was a matter of paramount principle involved, and that for the purpose of settling this principle, he demanded a verdict. The jury retired, and in due time presented a verdict for the defendant—but with a supplement which led to some inquiry as to how the verdict was reached, and by which, the information was elicited that when the jury commenced their deliberations one of the number arose and addressed the others in terms something like these: "Gentlemen, I was a juror in the case of B. against V. the other day, and I have subsequently learned that the verdict in that case will nearly ruin B. This case is very much like that in number of witnesses and in probable cost, and if this should go against B. it will virtually break him up. Now can't we find for B. and yet satisfy both parties? Judge T. has virtually given us license to find for B. as to the money involved, if we can at the same time take care of the Judge's reputation. Now I propose that we find for the defendant, but find also that the attempt to impeach Judge T. and his niece has been wholly unsuccessful." This was at once acceded to by all, and the verdict was rendered accordingly. Judge T. was supposed to be in rather opulent circumstances, but the result after all was one of bitter disappointment to him.

In another case, S. and P. were neighbors, and on terms of intimate friendship. Both were members of a school board. They disagreed about the employment of a certain teacher; the difference widened until they were completely alienated. Their feelings waxed warmer and warmer, until finally, open hostilities commenced. During the halcyon days of their friendship, P., having slaughtered a pig, sent one-half to S. Soon afterwards, S., having a surplus of beef on hand, sent a liberal cut to P. In the meantime, they had occasionally borrowed and lent back and forth such tools and agricultural implements as the one might happen to need and the other be able to spare for the time being. S., who seems to have been a little the more pugnacious of the two, finally could contain himself no longer, and brought suit for the beef with which he had supplied P., and also for a singletree, and perhaps one or two other things which, as he alleged, he had lent to P., and which had never been returned. P. lost no time in responding with a counter claim for the pork, and also for an old pair of buggy shafts which had been lent and never returned; and he also interposed the further defense that while the pork which he supplied was good marketable pork, the beef in fact was not, but was from an original male animal which was not fit for human consumption. The parties were at last arrayed for trial, and each exerted himself to the utmost. Not only were there present a great number of witnesses to testify as to the merits, but each side had ransacked the whole country-side in the search for witnesses who would be willing to give testimony tending to impeach the veracity not only of the plaintiff and defendant themselves, but of some of the principal witnesses. P. finally won, but the victory was not unlike that of King Pyrrhus, of which he complained that another such would ruin him.

None of these men in the cases I have referred to were bad men. No accusation would rightfully lie against any of them of stirring up strife among their neighbors. In fact, all of them would have been in a general way safe coun-

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selors in the troubles and difficulties of others, and where their own passions were not aroused. The great trouble seems to have been that in temper they were ardent and aggressive, and having taken the first false step, they could not withstand the dictates of pride of character and obstinacy, in the absence of any restraining power outside of themselves.

The vital question is, Could not a court of conciliation in such cases be effectively used as the outside power to turn the scale in favor of forbearance and peace? A general knowledge of human nature would lead us to believe that when men in their disputes about property rights have been alienated, and when each has already commenced to take that distorted view of the acts of the other, which is caused by looking through the medium of passion, they do not, until all the avenues to peaceful adjustment have been closed, give themselves up to uncontrolled resentment and vindictiveness. Be it said to the honor of human nature, that the great majority of men are at bottom well disposed and fairly inclined, notwithstanding the fact that at times they may form harsh and unreasoning judgments.

We may readily suppose that many such men when about to quit the ways of peace and engage in legal strife with a neighbor or friend, often turn to cast a glance of friendly reluctance back at the old-time amity and good-feeling which are to be sacrificed in the coming contest, and would not be averse to some honorable mode of retreat.

No one will question that the objects sought to be attained by courts of conciliation are such as to commend themselves to the support of all who desire to promote the well-being and good order of society. Among these objects are the lifting from other courts the burden of much profitless and worse than useless litigation; the saving of the would-be litigants themselves from the disastrous consequences of their own folly, and, not less than these, the prevention of the demoralizing effects of unnecessary strife in the community. The only question seems to be, then, whether courts of conciliation would have such effect. It may be argued that the settlement of controversies is already open to parties through arbitration, and that this affords sufficient opportunity for conciliatory appeals to reason; but a glance suffices to convince us that arbitration does not go to the root of the matter. Arbitration simply dispenses with court-houses and judicial officers and juries, and ordinarily abates something of the formality of judicial proceedings; but the underlying principle is the same. The parties make their allegations, produce their proofs, and the whole matter is taken out of the hands of the litigants and the result declared without any compromise of concession on their part. We will concede that the decision is to be made according to the very right of the matter, without reference to strictly technical rules, and yet this does not change the principle already adverted to. Besides, arbitrations are cumbrous and unsatisfactory as to the result. The contestants usually find themselves in court at last, there to fight the battle over.

I think I have given some reasons for the establishment of courts of conciliation, but without thus far attempting to define specifically just what such courts ought to be. I presume that a law providing for their creation would

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exclude certain classes of cases from its operation, and that in the conduct of the business of such courts the presence of attorneys would not be allowed.

I would not be understood as disparaging the services of professional advisers. With the ignorant populace, rapacity is supposed to be the ruling motive of lawyers; and there are small lawyers, as we all know, hanging on the outskirts of the profession, who are little more than foul carrion-birds, feeding on the rottenness of humanity. But we know the profession is not to be measured by these. Lawyers, as a rule, are far above the miserable arts of the pettifogger, and disdain to promote strife in order that pecuniary gain may follow. But one almost insuperable difficulty in the way of any conciliation to be effected by the legal advisers of parties is, that it is so often the case that the client does not disclose all the important points connected with his cause. Of course the commonest prudence would dictate the very fullest confidence, so that by the revelation of the whole truth the counsel may know the worst, and provide against it. Experience, however, teaches that clients do, in a large number of instances, follow the suicidal policy referred to.

The presiding officer of a court of conciliation would not only be disinterested, and owe no duty to either litigant more than the other, but he would have both parties before him, with the opportunity to hear both, compare the one story with the other, and thus deduce more intelligent conclusions than the paid adviser of either, who, in the first place, had only heard one side.

I cannot forbear saying, in conclusion, that if we require any other or higher motive for the adoption of every expedient for putting an end to human enmity and contention than has already been stated, it is given by the greatest of all teachers, who pronounced the beatitude, "Blessed are the peace-makers, for they shall be called the children of God."

DESCENTS AND DISTRIBUTIONS.

BY T. B. WALL.

Statutes are too often enacted in haste and without that careful consideration which their influence upon the affairs of a people should command. Inconsiderate and surplus legislation is one of the evils of the age.

It is unnecessary in a body of lawyers to advert to the importance of the statutes of descents and distributions and their far-reaching influence upon the worldly affairs of the people. It is, perhaps, a sad commentary upon the civilization of the age, that the whole object of life, to a major part of mankind, is the accumulation of property.

It is not strange, then, that when this life is quitted, and since these accumulations must be left behind, that we are concerned as to the successors of our possessions. This matter has from the earliest time received the attention of the State. Every person has the right to provide for the distribution of his es-

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tate after his death, subject to certain limitations, which the State has the right to impose.

In case of a failure to make such provision, the State wisely undertakes to do so. In short, the State has made a will for all who die intestate. The will thus provided by the State should be such as the average man in the usual and ordinary conditions of life, and actuated by the impulses and affections of a healthy mind, would freely and naturally make. In the main, the State of Kansas has prepared such a will, and it is not an infrequent professional experience to apprise those desirous of making a will, that the law of the State will distribute their estate just as they propose to bequeath it. This is a high tribute of praise to the wisdom of the men who formed a will for those who die intestate. The ruthless hand of *present* legislation should be laid very gently on the statutes under consideration.

I have but few criticisms to make or changes to suggest, but a few of the sections of the act would, in not infrequent conditions, distribute an estate in a manner not only contrary to the natural desires, but in a manner repugnant to all the natural and usual affections of men.

While a "statute may make anyone an heir," yet care should be exercised that it does not make one an heir which would be contrary to the natural desires and feelings which prompt most men. It is provided by the statutes under discussion, that the wife or husband of an intestate shall inherit a one-half interest in the estate of the deceased, and that the remaining estate shall descend in equal parts to the children of such intestate. This is right, founded as it is upon the pure and refined instincts of human nature. But section 19 of the act provides that if any one of his children be dead, the heirs of such child shall inherit his share in accordance with the rules prescribed, in the same manner as though such child had outlived his parent.

Under this section, taken with others as very properly construed by the Supreme Court, in several reported cases, the parent may survive a child who has died without issue, leaving a husband or wife, who has subsequently married and died leaving a husband or wife, whose heirs would inherit from such parent.

To illustrate: A dies intestate, leaving a widow; they have had one child, who married and died without issue before death of A, and who left a husband who remarried and died before A, leaving a widow; such widow would inherit an equal share in the estate of A with his widow. No one will seriously contend that such a distribution of the estate of A is right; nor is this a mere supposititious case and one not likely to occur, but is one of frequent happening.

Again, the same section under the following conditions will cause A's estate to be distributed as follows: A dies intestate, leaving B, his widow, and C, their child; they have had born to them D, E, F, G, and H, who died in infancy. The widow, B, inherits one-half from A and five-twelfths from D, E, F, G, and H, which is eleven-twelfths of the whole estate, and the surviving child, C, takes one-twelfth. The widow, B, may have married and died before receiving her eleven-twelfths of the estate, which would pass to such husband, to the exclusion of C. (See case of *Delashmutt vs. Parrent*, 40 Kansas, page 641.)

Such are a few of the many illustrations which may be made, not from theory, but from actual conditions. All this could be changed without disturbing

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and marring the whole act, which is, in the main, a good one, by amending section 19 so as to read: "If any one of his children shall be dead, the issue of such child shall inherit his share, in accordance with the rules herein provided, in the same manner as though such child had outlived his parent."

CREATION OF AN INTERMEDIATE APPELLATE COURT.

JOHN D. MILLIKEN.

Mr. President, and Members of the Bar Association of the State of Kansas: The overcrowded condition of the courts of last resort, both national and state, is a subject which confronts the people in such a way that the question and manner of affording them relief must be met.

The Supreme Court of the United States is so far in arrears that when a case reaches it, it is equivalent to a postponement of justice for from three to four years, and many of the State courts are in a like condition. Bills for the relief of the former court are now pending in both the Senate and House of Representatives.

Illinois, Texas and other States have in former years wrestled with the question, and have enacted laws upon the subject.

Our neighboring State of Missouri at the last election sought a remedy by an increase in the number of her judges in a manner somewhat similar to that voted upon by the people of this commonwealth.

Iowa is likewise discussing the congested condition of the docket of her highest court, and those charged with the duty of administering justice in Kansas have for several years been making some effort in the same direction, with the results known to you all.

The necessity of having a sufficient number of properly constituted courts to transact the business of the country with dispatch and to afford litigants a speedy adjudication of their grievances, is manifest to all. Not only that, but it is a right to which all classes are entitled.

While it directly affects the profession and suitors, no one should be more deeply interested in having a prompt, rapid, effective and respected system of legal procedure than the man who never goes to law.

He is interested in having it well known that the State has provided a ready and efficient remedy for those acts which provoke law-suits, for the known existence of such a remedy is a strong deterrent force upon men who are disposed to commit such acts.

We are loth to find fault with our system of jurisprudence; for its simplicity, and the effectiveness, cheapness and fearlessness with which justice has been administered in this country, entitles it to our highest respect. Yet, while this is true, we must all admit that in many instances the process is too slow, especially in the higher courts.

It is stated upon good authority that under the English system it is possible for even a poor litigant to rush his opulent opponent through all the courts,

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from the highest to the lowest, in a few months' time, in some instances not exceeding from sixty to ninety days.

When we take into consideration that the whole community is interested in whatever relates to the right administration of justice, it is marvelous that while we vote millions for railroads and public improvements, and for whatever promotes trade and commerce, our appellate courts are denied the necessary appliances for the proper discharge of their functions.

Twice within a recent period have the legislatures of our State submitted to the people propositions to amend the constitution providing for an increase of judges of the Supreme Court to a number commensurate with the business interests, growth and development of the State. Both times they were overwhelmingly defeated. I know it is said that the first so resulted because of other objectionable propositions submitted with it; but whatever of truth or force there may be in that argument, the same could not be urged against it upon the second occasion. Some undertake to account for its defeat the second time upon the grounds of the peculiar political situation, and say that it unfortunately lay in the pathway of the seemingly gentle zephyrs, in the folds of which there was the destructive breath of the cyclone, which obliterated and carried to, we know not where, the fond hopes, ambitions and aspirations of so many Kansas "statesmen." Still others claim that the opposition of those who desired a constitutional convention for other purposes caused its defeat; but when these causes are analyzed they will be found unsatisfactory, nor will they account for the verdict so emphatically expressed by the people at the polls.

The measure was supported by members of all political faiths, and, in my judgment, not one substantial argument was ever produced against it. The true reason of the failure is, that people were, and are, not fully advised of the importance and necessities of the case, and the members of the bar are chiefly to blame therefor. They only see the necessity for it in its proper light, and relief must come mainly through their efforts. The people do not desire to, neither will they, neglect their own interests, nor knowingly do a wrong to any class of citizens. Let the same light be thrown upon this subject that is upon other measures, and relief will be afforded.

That our court is about two and one-half years behind with its work, and that no perceptible improvement is being made, notwithstanding the great amount of work it performs, and the valuable assistance rendered by the "Commission," shows that some means should be devised whereby cases can be decided within a shorter period of time than is done at present.

The simplicity of the judicial system of our State is so commendable that it is somewhat hazardous to suggest a plan for relief from the present pressure, that in any wise complicates the system or entails more labor to the profession or expense to the litigants. Yet, in view of the repeated failure to adopt an amendment to our constitution providing for an increase in the number of judges, and the necessity for doing something, I venture to suggest that the creation of an intermediate appellate court will afford a legitimate and not necessarily expensive remedy.

The constitution of our State provides that the "judicial power of this State shall be vested in a supreme court, district courts, probate courts, justices of

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the peace, and such other courts inferior to the Supreme Court as may be provided by law."

"The Supreme Court shall have original jurisdiction in proceedings in *quo warranto*, *mandamus*, *habeas corpus*, and such appellate jurisdiction as may be provided by law."

With the exceptions above stated, the Supreme Court is strictly an appellate court, and until 1889 there was no limitation or restriction whatsoever in taking appeals thereto. The most trifling case, no matter what the amount involved, or what the motive of the appellant, could, by a compliance with the very reasonable requirements of the statutes in reference to cost and appeal bonds, be taken to the Supreme Court.

I think an investigation will disclose the fact that a very large percentage of the cases appealed are for the purpose of delay, rather than for legitimate reasons. Corporations with their salaried attorneys, or strong and wealthy litigants, in many cases do so that they may "wear out" the less-fortunate opponent and obtain delays which will cause him to wholly abandon his case, or enable them to make a favorable compromise with him. Thus the law, which is intended to be a shield for the weak as against the strong, is subverted, and the greatest fundamental principle for which governments are instituted and exist is to that extent a failure, and the law is to a corresponding degree brought into disrepute.

In 1889 the Legislature enacted a law limiting the right to appeal in civil actions where the amount in controversy is less than one hundred dollars, exclusive of costs, except in cases involving the tax or revenue laws, or the title to real estate, or an action for damages in which slander, libel, malicious prosecution, or false imprisonment is declared upon, or the constitution of the State, or constitution or treaties of the United States, are involved. With so many exceptions in civil actions, and no restrictions whatsoever in criminal cases, this law affords, practically, no relief in the premises.

As will be observed, by a reference to the provisions of the constitution above quoted, it in no wise prohibits the creation of such a court as is suggested. Neither does it prohibit the placing of reasonable restrictions upon the cases which may be appealed to the Supreme Court. It shall have "such appellate jurisdiction as is provided by law."

I think, then, that if our Legislature would enact a law creating "the court of appeals," possessing the powers and charged with the duties in substance as hereinafter designated, that it would have a right to do so under the constitution; and when it had worked off the accumulated cases, or if from any reason it became necessary or desirable to do so, it could be abolished simply by a repeal of the law creating it.

Such courts should have appellate jurisdiction of all matters of appeal, or writs of error from the final orders or decrees of any district, common pleas, or superior court of the State, (or any other like courts which might be established,) in all cases involving a specified sum, with the exception of such matters as are excepted in the law of 1889 above referred to, but should limit the class of appealable cases much more than that law does. For instance, it should have jurisdiction of all cases where less than one thousand dollars is in

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controversy, unless the constitution of the State or the constitution, laws or treaties of the United States, are involved. The decision of such court should be final, unless a majority of the judges thereof should certify that there is some issue or legal principle involved that should be passed upon by the Supreme Court, in which event, upon application of the party to the cause desiring it done, it should be certified to such court for hearing. The court should consist of three judges, and should in all respects be conducted under the laws governing the Supreme Court, so far as practicable or applicable. All its opinions should be written, but need not be published, as that would entail expense to the State, and tend to some confusion.

This would leave for direct appeal to the Supreme Court all criminal cases, the more important civil cases, and would in no instance deprive the litigant of any substantial right, for this court should be composed of as able jurists as the higher court. The law should provide that, of cases now pending, such as come within the jurisdiction of the court of appeals should be assigned to that court by the judges of the Supreme Court.

The strongest objection that can be urged against such a court, is in making the amount involved the criterion of the right to an appeal.

The right to have the judgment of the highest court upon every man's case is in one sense an inherent one.

But the answer to that objection is found in the principle which is applied to all the branches of civil government, and which in fact makes its existence possible, namely, that the individual must surrender some personal rights for the good of the whole body politic. In other words, its justification is found in the argument of convenience and necessity, and brings us face to face with the great unanswered question as to what the rights of an individual are when they conflict with the rights and necessities of the public generally.

Some States do not permit actions to be brought at all upon a sum under a given amount, and, as hereafter stated, some of our national courts do not permit appeals to the court of last resort in many instances.

Jury trials in justice courts in this State have never been appealable when less than $20 is claimed by one of the parties to the suit, and the law of 1889 heretofore mentioned was simply a step further in the same direction. The effect of this plan would be to relieve the Supreme Court of the trial of the more trivial cases, and would afford its judges better opportunities for considering the more important ones, and would thereby add dignity to the very creditable character its opinions have heretofore borne throughout the land.

Other States have enacted laws embodying the same principles, and they have in the main given satisfaction.

The bill pending in the House of Representatives for relief of the Supreme Court of the United States is upon the same principle; that is, it provides for an increase of the judges of the circuit courts, and makes them in certain cases appellate courts, and places a restriction upon the cases which may be appealed to the Supreme Court. In fact, the circuit courts of the United States are now, within certain numerical limits and in certain classes of cases, courts of last resort, and there has been no decided opposition to that part of the national judicial system.

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Texas has obtained relief by creating a court with jurisdiction limited to probate and criminal cases; but in peaceful and healthful Kansas such a court would be without a vocation.

Illinois has a system of intermediate appellate courts, which has been in successful operation for a number of years, and through which nearly all civil cases must pass to reach the Supreme Court. This increases costs and expenses, and necessitates trials in three courts, and causes delays which will be obviated by the plan suggested herein.

There are various other means of obtaining substantial relief which should be utilized, and while possibly not germane to the topic under discussion, I cannot refrain from alluding to them. I would suggest a further restriction upon the class of cases which may be appealed; shortening the time allowed for appeal; writing opinions only in cases where there is some new principle involved, or where a majority of the judges are of opinion that the points decided will add something of importance to the jurisprudence of the State. The needless labor imposed upon our court in deciding case after case, when elementary principles only are involved, is one of the causes of the difficulty, and the court should be protected by the law. A more rigid enforcement of the rules of practice in reference to delays and continuances from the highest to the lowest court should prevail. Petty litigation and appeals in such cases should be discouraged. I am confident that there is nothing in the conduct of lawyers that brings upon them and the courts greater stigma and reproach than the delays and dilatory practices so common among us.

The impression created upon the mind of the laity is, that we are not seeking to redress a wrong or vindicate a right, but to prevent the accomplishment of such result. As in politics, it is the masses who direct the course of their leaders, so in the law, the bar makes the court to a greater extent than we are aware of; and I may be pardoned for this diversion, in saying that if we, the practitioners, will make such corrections in these and other directions as are possible, we will have done much to relieve the pressure which is upon the crowded courts, and to solve the difficulties confronting us.

These views are not expressed from the standpoint of a pessimist, but rather the opposite, for it is well to get an occasional glimpse of ourselves "as others see us." If we do this, we will incline to a correction of our mistakes and abuses, and the results will be an elevation of the courts and bar to a higher plane, and our profession will deserve indeed to be spoken of as "the learned and honorable profession of the law."

Notwithstanding the potency of these means, they are slow and somewhat uncertain processes, and a more direct and immediate measure is demanded. While conscious of the fact that the creation of a court of appeals will meet with opposition, and that the plan suggested may not possess the merit which entitles it to your favorable consideration, yet I think it points in the right direction, and if these suggestions be the means of awakening in other minds thoughts which will result in the development of a plan that is desirable, feasible, and practicable, they will have subserved their purpose, and I trust that your energies will be diligently and earnestly exercised to that end.

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WESTERN RAILWAY TROUBLES.

BY CHARLES S. GLEED.

There is trouble in Western railway circles. It is chiefly of two kinds:

First, the trouble of railway security holders who have lost heavily by depreciation in the value of their holdings; and

Second, the trouble of railway patrons who find rates of transportation out of harmony with the prices of products.

Instances of this unhappiness are as follows: The reorganization of the Atchison, Topeka & Santa Fé. The foreclosure of the bonds of the Chicago, Kansas & Nebraska (Chicago, Rock Island & Pacific west of the Missouri river). The receiverships of the Kansas Pacific. The long-continued non-dividend-paying condition of the Union Pacific. The receiverships of the Missouri, Kansas & Texas. The published complaints of President Blackstone, of the Chicago & Alton. The receivership of the Denver & Rio Grande. The receiverships of the Wabash. The prudential purchase of the Chicago, Burlington & Northern by the Chicago, Burlington & Quincy. The stock and bond changes of the Illinois Central, and the Chicago, Milwaukee & St. Paul. The establishment of an Inter-State Commerce Commission by Congress, and the State Boards of Railway Control by the various State Legislatures. The frequent demands for emergency rates and special rates and reduced rates in the granger States. The bitter debates between the railways and the people, as in Iowa.

These are but few of the many cases that might be enumerated.

The blame for all this trouble should be assigned in a general way, as follows:

First (and chiefly), it is with the people — individually, as communities, and as represented by State and Federal Legislatures.

Second, it is with the security holders of the railways — individually, and as represented by committees, bankers, and boards of directors.

Third, it is with general officers in immediate charge of railway property and its operation.

MISTAKES OF THE PEOPLE.

The people have failed to realize the exact political and economic status of railways and their relation to them.

They have seemed to think that railways, like the laws of nature, are too big and mysteriously powerful to be comprehended or regulated, and that with reference to them, "whatever is is right."

If perchance they abandon this view at any time, they usually go as far in the opposite direction, and assume to know more than the most skillful in the

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business have been able to learn in a lifetime of close and intelligent application.

Some of the facts that the people have overlooked or ignored are easily stated:

Railways in certain respects are as truly public property as the ordinary wagon-roads, canals, or other public highways.

The proper private ownership in railway property finds its parallel in the private ownership of vehicles and systems of locomotion on ordinary highways, and in the right of individuals to have compensation for labor and material furnished for making highway improvements.

There cannot be the same miscellaneous use of a railway that there is of a county road, but there is a miscellaneous use of every railway which differs from the same use of the county road only in degree, not in principle.

The cars of all railways, freight lines, sleeping-car companies, private owners, etc., are used on any given road, and, within certain general limits, no one has ever successfully questioned their right to be so used.

The analogy of the railway and the highway should be kept in mind in examining both the legal and the practical aspects of this question.

A PLAIN ABSURDITY.

It is as absurd to have too many railways as to have too many highways.

A given railway track, up to a certain limit, can carry a heavy traffic, for a certain cost, proportionately cheaper than it can a light traffic.

It follows, therefore, that having two tracks to do the business which one track can do, is to ask railway patrons, the people, by their patronage, to furnish interest-money on an unnecessary investment of capital for construction, maintenance and operation.

There should be general legislative supervision of the whole business of railway construction, and no road should be permitted until there is a public demand which capital is willing to supply on a purely business basis without subsidy or local aid — at least of any such sort as a public promise to pay in the future.

The exceptions to this rule suggest themselves and relate to military and other necessities of common interest, and to occasional instances of mere commercial advantage which Legislatures can easily appreciate and pass on. But the general rule that railways should be built only as directly demanded or warranted by actual business conditions is a sound one.

A railway is primarily a non-producer. It is a producer secondarily, by reason of rendering marketable the products of remote localities. But railways being primarily non-producers, it follows that the more such non-producing agencies there are to be supported the greater the tax will be on producers.

HOW FARMERS FIGURE.

The farmer wants two railroads, that they may bid against each other for the hauling of his wheat to market. But he forgets that those two roads, instead of bidding each other poor and leaving him rich, will — because they

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must — get their heads together and determine what expenses, interest charges and dividends have to be earned, and then make and adhere to the rates which will yield such expenses, charges, and dividends.

When this has been done, as it inevitably must be, the only remedy left is for the State to drive one or both of the alleged rival roads into bankruptcy, by fixing insufficient rates, and then — the whole performance remains to be repeated.

It is a fact generally ignored, that the attrition of transportation often wears out the life of the commodities transported. It reduces a steer to its horns, and a bushel of grain to the bag it started in.

The Kansas farmer who hauls his produce to New York and exchanges what he has left on his arrival for cloth or hardware, and hauls that back to Kansas, is likely to find that he has got but little for his pains — but his pains.

And yet it is by no means a necessary conclusion (though the one most quickly and frequently reached) that the railways have been overpaid for the service they have rendered in hauling the grain and hardware between Kansas and New York.

In other words, both railroads and people should remember that cheap commodities do not have to be carried far before the carrier is compelled to take the freight for the transportation fee.

It is not reasonable to expect to carry everything produced a long way to market, and bring everything consumed the same long way back. Few commodities will stand the levy of so much toll.

TOO MUCH AND TOO SOON.

All over the West the folly of over-construction and premature construction has been committed. Aid bonds have been piled higher than the Pyramids.

Oily gentlemen have persuaded communities and municipalities that the taxes on proposed railroads would more than pay for the bonds voted in their aid. They have made it seem perfectly feasible to get over the fence by pulling the boot-straps.

But the same oily gentlemen have neglected to speak of the insupportable burden of having to pay, in freight and passenger rates, interest on an unnecessary multiplication of invested capital — an unnecessary interest charge on the people, running on forever, no matter how men may come or go.

A resolution was introduced in the last Kansas Legislature, when railways were being chartered by thousands of miles, declaring in substance, that whereas Kansas is an agricultural country, some of its lands ought to be reserved for agricultural purposes instead of being all given to railway companies for rights of way.

This resolution struck all careful observers as a singularly appropriate criticism of the wholesale railway construction then going on.

That railway mileage has increased faster proportionately than the increase of population in the States and Territories west of the Missouri river, is shown by the figures on the next page, which explain themselves.

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INCREASE OF RAILWAY MILEAGE.

STATES AND TERRITORIES.	1875.	1878.	1880.	1882.	1885.	1886.	1887.	1888.	1889-90.	Per cent. increase...
Dakota	275	320	1,225	2,080	2,876	3,556	4,314	4,465	4,535	1,649
Nebraska	1,107	1,334	1,953	2,498	2,963	3,651	4,767	4,979	5,124	372
Kansas	2,150	2,427	3,400	3,820	4,520	5,943	8,194	8,754	8,810	309
Indian Territory	.....	275	289	350	352	427	886	975	1,155	.....
Texas	1,650	2,428	3,244	6,009	6,370	6,918	7,979	8,210	8,498	415
New Mexico	.....	8	758	1,089	1,194	1,234	1,237	1,321	1,326	.....
Arizona	.....	27	349	713	905	989	1,060	1,094	1,094	.....
Colorado	682	1,165	1,570	2,766	2,877	2,900	3,773	4,038	4,097	500
Wyoming	459	472	512	625	616	744	876	901	950	102
Montana	.....	.....	106	633	1,046	1,062	1,687	1,803	2,001	.....
Idaho	.....	103	206	494	794	808	847	867	926	.....
Washington	110	212	289	472	776	933	1,036	1,319	1,705	1,450
Oregon	250	283	508	756	1,181	1,222	1,290	1,412	1,413	465
California	1,328	2,149	2,195	2,636	3,045	3,263	3,656	4,126	4,202	215
Nevada	650	627	739	948	948	947	947	947	916	40
Utah	459	543	842	1,062	1,138	1,138	1,134	1,153	1,211	164

INCREASE OF POPULATION.

STATES AND TERRITORIES.	1875.	1880.	1885.	1890.	Per cent. increase...
Dakota	60,000	135,177	415,263	559,060	803
Nebraska	245,280	452,402	740,645	1,105,000	349
Kansas	528,437	996,096	1,268,562	1,680,000	201
Indian Territory	75,000	100,000	110,000	150,000	100
Texas	1,500,000	1,591,749	1,816,000	2,142,000	43
New Mexico	100,000	119,565	131,985	190,000	90
Arizona	6,482	40,440	.....	59,691	820
Colorado	125,000	194,327	243,910	410,000	228
Wyoming	25,000	20,789	65,000	60,000	140
Montana	27,000	39,159	100,000	128,000	374
Idaho	21,000	32,610	75,000	79,000	276
Washington	36,000	75,116	129,438	377,000	948
Oregon	112,000	174,768	194,150	304,000	171
California	770,600	864,964	1,050,000	1,342,000	74
Nevada	52,540	62,266	65,000	46,000	*12
Utah	130,000	143,963	.....	206,498	59

*Loss.

It should be remembered in this connection that even if railway construction and the population of the States had increased equally, the freight traffic of the roads (usually yielding about two-thirds of their revenue) could not reasonably be expected to show a like increase.

While the passenger traffic is naturally augmented by the increase of wealth and population, the reverse is true of freight traffic, proportionately considered, because of the growth of home manufactures.

The New West brought all its supplies from the East. The long haul proved a protective tariff which is forcing the West to manufacture what it uses more and more every year.

Justice requires here a note of the fact that most of the clear cases of over-construction should be charged to others than the chief authorities of the well-

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established systems. Local ambition and the private schemes of bond and franchise brokers have conspired to force the construction of much useless mileage. Wise managers, against their natural wishes, have been compelled to take and try to make useful as auxiliary lines much mileage, the construction of which they would never have advised as an original proposition.

AN UNFAMILIAR IDEA.

Again, there is a certain moral obligation on the people which is rarely confessed.

Every railway stock and bond partakes not a little of the essential character of a Government security, and should therefore have a proportionate degree of permanence in value.

The State creates the railway corporation, and assumes afterward to retain a control of it—not in one way alone, but in many and radical ways, such as the enactment of statutes applying to specific features of the business, the enlargement of the powers of ordinary courts, and the creation of specific boards and commissions, with authority to restrain and control railway action.

To illustrate this point, consider the large number of legally constituted bodies, boards, and officials authorized by virtue of original or delegated legislative authority to do that which will take money directly from the treasury of the Atchison, Topeka & Santa Fé company:

The Federal Congress	1
The Interstate Commerce Commission	1
State and Territorial legislatures	11
State Boards of Railway Commissioners	11
State and Federal courts, estimated	500
City councils and county commissioners, estimated	500
Boards of tax assessors, estimated	11
Total	1,035

To these should be added the rate-cutters of rival roads and a countless number of petty authorities with more or less power to arbitrarily subtract from the company's funds.

Courts—judges and juries—are supposed to do nothing but execute legislative mandates, but it is impossible for them to wholly exclude the element of the arbitrary and irresponsible. The sovereign Legislature has little to do with a court in its determination of whether a given accident shall cost the company $10 or $10,000.

It must surely be against good public policy to have securities, such as stocks and bonds, in which the Government is actually or constructively a maker, be subject to the extreme fluctuations which characterize purely private securities.

That the Government, State or Federal, is, by its peculiar participation in the birth and control of every railway, one of the makers of every railway stock and bond, seems perfectly clear.

A national bank is not more closely related to the Government, that is, to the people, than is a railway. There is substantially the same obligation on the Government to give both a special care and supervision.

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FOR NOT EVEN POTTAGE.

Again, the people have blundered in permitting railway companies to wantonly pile up stock and bond obligations without reference to capital actually invested in the roads.

The right to regulate rates for traffic simply means the right to say what profits a railway investment may earn.

For the State to permit that investment to be falsely stated, as in the case of unnecessary bonds, and stock not paid for, is to be put in the position of having to choose between, on the one hand, letting her people be bled, and, on the other, slashing the values of railway securities held by innocent third party purchasers.

It is but just to note here, that there is not so much "water" in Western roads as is commonly supposed. Writers on railway subjects are given to great exaggeration on this point.

The excessive issue of railway stocks and bonds is not alone an outrage on stockholders and bondholders. It is a direct outrage on the public, in many ways other than that suggested in the preceding paragraph.

When the securities of a road begin to sag, then the chief authorities call on managers for economy at any cost. Wages are cut and strikes ensue. Machinists and track-workers are discharged and set to tramping. The track is neglected. It suffers from neglect in a way that can never be atoned for. Rails are ruined and machinery is injured. The public suffers from increased danger to life and property.

It is not sentiment that makes every railway superintendent broken-hearted when he is ordered to neglect his track. It is, rather, an absolute knowledge that such economy is the rankest extravagance and the boldest possible affront to the rights of the public.

THE OWNERS ALSO WRONG.

The blame attaching to owners of railways is more easily stated than that attaching to the people. Some of the facts about them are not commonly considered.

It is a fact that in the railway business there is usually shown the best business judgment, so far as the operating end is concerned, while the financial or proprietary end is too often conducted in a manner anything but rational.

No business can be more thoroughly systematized and more safely and savingly conducted than is the great body of business in this country pertaining to immediate and practical railway operation. In nine cases out of ten, where mistakes in operation are made, they are not the mistakes of the men in immediate charge.

But the financial side of the railway business is often run most wretchedly — and this is why: The men who determine rates of interest, amount of debt, percentage of profit, etc., are not the men who know what can be earned.

The theory of small and compact corporation business — a business which all interested parties can know all about, a partnership, in fact — is applied to a business vast, technical, widely scattered, complicated and confusing.

What does a railway stockholder know about the property he owns? What

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knowledge has he on which to base his annual vote for or against the continuance of a given dynasty? If his stock is paying dividends, how does he know but that it is by processes which mean ultimate death to his principal? If it is not paying, that settles it. His proxy goes immediately to somebody—little matter who—just so there be loud proclamations of honesty and ability, or a large and excellent general reputation.

UNPARDONABLE GREED.

The greed of shareholders leads to untold trouble, because it imposes on those who represent them an unnatural stimulus for making property appear to yield in one way or period what it must inevitably lose in another.

Railway owners have no more of an inherent right to make money every year than have tillers of the soil. When the farmers fail to make money, then it would seem, in a general way, time for those who engage in transporting farm products to go without profits.

Of course, this rule must be subject to many and great modifications, based on the variations of industrial fortune at various times in various places.

In this connection readers should remember that a railway system is like the human body. A hurt in one place is a hurt all over. If the Missouri Pacific road (for example) has scant traffic in Kansas, it must recoup in Missouri. If it loses money on the Central Branch line, it must make its loss good on the St. Louis, Fort Scott & Wichita line, or somewhere else.

It should also be remembered that many communities and territories get ample railway facilities through the construction of lines for through traffic which would otherwise never be secured. A thousand towns as good as Coolidge or Hugo or Springer will never be shaken by thundering trains of palace cars.

All this means that the science of fixing just rates is a branch of the highest mathematics, requiring alike the skill of an astronomer and the wisdom of an economist—if not the penetrating vision of a god.

INTIMIDATED MANAGERS.

Immediate railway managers are, as a rule, men of extraordinary experience and good judgment, but they act constantly under the cat-o'-nine-tails wielded by boards of directors, who know little or nothing about the business, except as it manifests itself in dividends or their failure.

The average railway general manager or line president is between the devil and the deep sea. His directors demand money with a "whereof fail not" that has the alternative of an official decapitation plainly written between the lines.

Mr. Charles Francis Adams, until recently president of the Union Pacific Railway, not long ago made a most sweeping condemnation of the methods by which freight and passenger agents of the American railroads get business. Mr. Adams's indignation on account of the lies told, agreements broken, and tricks played in the manipulation of freight and passenger rates, is creditable enough, perhaps, to his moral sense, but it is nevertheless amusing.

It is amusing because the methods named as characteristics of railroads generally, in this respect, were precisely the methods of the vast system under

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Mr. Adams's control at the time he spoke; and such methods were and are adopted by the employés of the Union Pacific for the same reasons that they are adopted by the employés of all other roads. The requirements made by Mr. Adams and his associates, high in power, were such as to make any other course on the part of subordinates absolutely impossible.

A prominent railway official, about three years ago, declined, until most ardently pressed, to receive a well-merited promotion. Being asked why he did so, he answered that a decrease in earnings was sure to occur in a comparatively short time, and he could not afford to have the records show that such decrease came on the heels of his increased authority. That there might be the best reasons for such decrease he felt would help him little on the day of reckoning.

EVEN BANKERS DO WRONG.

While considering the errors of railway owners, it is worth while to suggest that in railway matters the bankers of the country often seem to abandon the rules they apply to all other business.

If an Eastern banker is asked to lend money to a gas company or a water company or a manufacturing company, he at once calls for balance sheets and an exhibit of costs, expenses and earnings. But with respect to railway loans it is too frequently true that no demonstration of an earning capacity by a record of business already done is required.

There is, therefore, a suspicion abroad in the land that many bankers have floated bad railway bonds for the sake of exorbitant commissions, and because they know that when calamity overtakes the holders of the bonds it will be too late or too difficult for the victims to locate the blame for the negotiation where it belongs.

THE MISTAKES OF MANAGERS.

As already intimated, immediate railway managers, when competent and honest, as is most often the case, make fewer mistakes than either patrons or proprietors. Their chief danger is their mettlesome desire not to be outdone, and to meet force with greater force.

When there were vast margins of profit in traffic, a rate war costing the roads hundreds of thousands of dollars was a convenient and effective weapon for forcing a rival into good behavior, or for compelling the Cinderella road to be given by its sisters some share of the good things going.

Rate wars are certainly growing unfashionable, though it may be slowly. The improvement is probably not due to conscience so much as to circumstances such as here suggested.

So far as new construction is concerned, it has of course been true that Western managers have had temptations not much known to Eastern managers. In the East, railway construction is very closely restricted by the topography of the country.

It would now be a matter of great physical difficulty to build a new line of railway between New York and Chicago — more particularly over the eastern half. In New England, the same physical conditions exist, and there is besides the added protection of small States, small Legislatures, many of them, and consequent ease in preventing the legal existence of new lines.

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But in the West, there is room for a railroad, physically, every hundred feet, as implied in the resolution of the Kansas statesman above quoted. The managers have accordingly often advised construction because of local importunity, and out of fear of rivals, which a perfectly unbiased judgment would have vetoed.

There have been, of course, instances where construction not desired or believed in as an original proposition has been made necessary by the previous construction of rival lines.

For example, the Atchison, Topeka & Santa Fé company did not build from Kansas City to Chicago until its original lines had been paralleled (considering both through and local business) by the Canadian Pacific, the Northern Pacific, the Chicago, Burlington & Quincy, the Rock Island, the Missouri Pacific, the Denver, Texas & Fort Worth, the St. Louis & San Francisco, the Denver & Rio Grande, and other lines—all doing Chicago and San Francisco business by their own lines and those of friendly connections.

Managers hereafter can do no better than to curb ambition, court economy, and be altogether cautious.

TOUCHING PROPOSED REFORMS.

This article is written, not to discuss the right or the wrong of our present general railway system, but to point out the nature and cause of the more common troubles, taking our system as we find it. This is not the place, therefore, to discuss the many proposed reforms of a radical and sweeping sort. But it is the place to present a few points which reformers should not overlook in discussing the question.

Referring to what the State should consider the value of railroad property under the proposed process of nationalization, or under any process of regulation: The legitimate cost of a railroad is not the sum that would simply replace it physically at any given time. It is rather what it cost originally, plus a fair rate of interest on the investment, plus what it has cost to operate it, minus what it has earned.

It is difficult to see why those who risk their money in railway enterprises should not be allowed the benefit of a circumstantial and fortuitous increase in the value of their investments, as much as if they had invested in farm lands or city property, or a mercantile or mechanical business. They take the risk of loss; they ought to be permitted the risk of gain.

It is undoubtedly true that if the nation owned the railways the people would not have, directly or indirectly, any such recourse on them as they now have. The citizen now who actually suffers from a railway is the one who actually has recourse on the offender. Failures on the part of the postal department of the Government to do what it undertakes to do are now taken as matters of course, whereas similar failures on the part of our railways would result at once in successful litigation.

Much more capital has been put into the railway business than has ever been taken out of it, or ever will be. This proves that the people, as a whole, since railways began, have fared far better than railway owners.

There have been large individual fortunes made in the railway business (as

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in the case of Mr. Gould), but there is little ground for the assertion that such fortunes have been made out of the public generally. As a rule, they have been made by a semi-gambling process among the stockholders themselves.

If ten thousand individuals own the shares of a railway company, and trade or gamble among themselves for the ownership of the shares, and one man gets all the shares, the public may be but little hurt. In fact the public may be benefitted, in that profits are thereafter to be forthcoming for only one man instead of for ten thousand. This is the method by which nearly all the largest railway owners have acquired their property. The method should be prohibited by law, so far as the gambling features are concerned.

Now, suppose this trading and gambling process to go on until some one man (Mr. Gould, for instance) owned all the railway properties in the country. When that day should come, the loudest possible cry for Government ownership would be heard. Platform cholera of the most violent type would develop all over the land.

And suppose, in response to this loud cry, Mr. Gould, by a few strokes of his pen, should convey all his railroads to the Government of the United States. What change would the people feel? No citizen would get his share of the national railway system and take it home with him. The roads would go on being operated. The men operating them would have to be supported as now, and the material used would have to be paid for. Every man in the service would have something of a political pull. More money would likely be paid for a given service than is now. The economy accomplished by individual supervision would be lost. The people might feel better, but they would most likely pay more and get less.

So long as the individual represented as owning all the railways in the United States turned his revenue back into the operation and improvement of the national system, the people would not be robbed of a penny merely by the legal title being in that one man. In other words, if Mr. Gould owned all the railways in the United States, and our laws were such as to prevent his taking and sequestering a profit out of keeping with the magnitude of his public service, the people would really be as well off as if the legal title lay in the Government. It would certainly not be wise to have one man own all the railways in the United States, but it is perfectly sure that if such a thing were to come to pass, that one man would have a deep and abiding conviction that the people were above him, and that he must administer his trust with all fairness, or his vast legal title would not benefit him by the amount of a week's poor wages.

If the nationalizing process is to begin, why should the railroads be the first things to come in, when it is so clear that they are so small a prize? The business of grinding grain into flour and feed costs the people vastly more proportionately than the railway business. Why not nationalize the mills first? This would touch every citizen in the most vital way.

The danger of improper partisan use of railway patronage in case of nationalization must not be overlooked. The postal service already gives rise to immeasurable complaint and debate. A sufficient civil-service plan should be

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assured before the people are asked to assume the risk of laying a political hand on the railway property of the country.

It may prove that a change in the constitution of the United States whereby all railroads will come directly under the regulation of Congress, as in the case of navigable waters, will afford all necessary relief, and settle all debate as between the railways and the people.

It should not be forgotten that while there is much to be said on the subject of railway wrongs (as the foregoing pages prove), yet the demagogues of the country greatly distort and exaggerate the real wrongs. For instance: we are told that Mr. Gould has made $100,000,000 in the railroad business, and the Government is abused for permitting it. We are not told that Mr. Gould's railroad profits have been made chiefly at the expense of stockholders, rather than of patrons. We are not told that there is a charge on all the Gould property, in the way of cost of material, salaries, and legal obligations of a thousand kinds, which makes it possible at any moment for this fortune to melt away as quickly as it grew. We are not told that Mr. Gould cannot take his $100,000,000 and go to Europe with it, or throw it into the sea, or devour it in high-priced food. We are not told that our laws are such that this Gould fortune cannot be entailed or otherwise kept together for very long. We are not told that this fortune, aside from the ups and downs of speculative trade in which Mr. Gould is preëminently powerful, is incident to two things, to wit: the new business of railroading (scarcely yet threescore and ten years of age), and the development and settlement of a new country — a combination which no legislative wisdom could be expected to foresee. We are not told that railway conductors once stole fortunes, robbing both the railroads and their patrons — all because the business was new and poorly understood. We are not told that Mr. Gould, in spite of many faults, has managed the roads under his control with far more honesty and with far more justice to the people than did most of his predecessors in the various properties. We are not told that rates of transportation have been steadily falling since the first days of railroading. We are not told that the laws have met and corrected a thousand faults in our system which no human foresight could have prevented. We are not told that under private ownership and public regulation we have the best railway system in the world, while our postal system, under public control, is inferior to that of many European countries. We are not told any such truths as these by the demagogues of stump and printing-press and forum — which leads to the remark that on this, as on all other questions, no man is fit to teach or lead the people unless he is ready to tell not only the truth, but the whole truth; and after that, to reason clearly and calmly and fairly; and after that, to act sturdily and steadily and justly.

It may be that nationalization and other great reforms are proper, and will come; but they must be approached temperately and wisely, or greater grief will follow than has ever yet been experienced.

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CONSTITUTION AND BY-LAWS.

CONSTITUTION.

ARTICLE 1. The name of the Association shall be The Bar Association of the State of Kansas.

ART. 2. The object of the Association shall be the elevation of the standard of professional learning and integrity, so as to inspire the greatest degree of respect for the efforts and influence of the bar in the administration of justice, and also to cultivate fraternal relations among its members.

ART. 3. The officers of the Association shall be a President, Vice President, Secretary, Treasurer, and an Executive Council of five members.

ART. 4. The President shall preside at all meetings of the Association, and shall open each annual meeting of the Association with an appropriate address. The Vice President shall preside in the absence of the President; and in the absence of both, a president *pro tem.* may be elected by the meeting. The Secretary shall keep a record of all the proceedings of the Association, and conduct the correspondence of the Association.

ART. 5. The Treasurer shall keep an account of all funds of the Association. The Executive Council shall manage the affairs of the Association, subject to the constitution and by-laws.

ART. 6. A quorum for the transaction of business shall be twenty members.

ART. 7. No person shall be admitted to membership of this Association who is not a member of the bar of the Supreme Court, and who has not been engaged in the regular practice of the law for one year next preceding his application for admission.

ART. 8. All applications for membership shall be referred to the Executive Council, who shall report the same to the Association, with their recommendation thereon; and no person shall be admitted to membership except by a two-thirds vote of the members present. Each member shall pay an admission fee of five dollars, and annual dues of three dollars.

ART. 9. The annual meeting of the Association shall be held on the second Tuesday of January, at the capital. Special meetings of the Association may be called by the Executive Council, of which notice shall be given the members by the Secretary thirty days prior thereto.

BY-LAWS.

SECTION 1. The Executive Council shall, on or before the first day of May of each year, designate such number of members, not exceeding six, to prepare and deliver or read at the next annual meeting thereafter appropriate addresses

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or papers upon subjects chosen and assigned by the Council to each of said members, as may be so selected for such purpose.

SEC. 2. The order of exercises at each annual meeting shall be as follows:

1. Opening address by the President.
2. Consideration of applications for membership.
3. Reports of Secretary and Treasurer.
4. Report of Executive Council.
5. Reports of standing committees.
6. Reports of special committees.
7. Delivering and reading of addresses and papers.
8. Miscellaneous business.
9. Election of officers and delegates to American Bar Association.

SEC. 3. There shall be chosen by ballot, at each annual meeting, three members as delegates to American Bar Association for the ensuing year.

SEC. 4. All addresses delivered and papers read before the Association, the copy of which is furnished by the author, shall be lodged with the Secretary. The annual address of the President, the reports of committees, and all proceedings of the annual meeting, shall be printed; but no other address delivered or paper read shall be printed, except by order of the Executive Council.

SEC. 5. The terms of office of all officers elected at any annual meeting shall begin at the adjournment of such annual meeting, and end at the adjournment of the next annual meeting. And in case of any vacancy, the Executive Council shall appoint some member to fill the vacancy, who shall hold until his successor is elected.

SEC. 6. The Treasurer's accounts and report shall be examined annually by the Executive Council before their presentation to the Association, and the Executive Council shall report the result of such examination of the Treasurer's report and accounts to the Association at its annual meeting.

SEC. 7. The Executive Council shall cause to be printed such number of copies of the constitution and by-laws of this Association, with a roll of the members of the Association, as it shall deem best, not exceeding one thousand copies, and shall distribute the same to members of the Association, and to such other persons, or associations, or societies, as they may deem prudent; and shall, with the proceedings of each annual meeting, print a roll of the members of the Association.

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ROLL OF MEMBERS.

NAME.	ADDRESS.	ADMITTED.
Abbott, A. J	Garden City	Jan. 8, 1890.
Ady, J. W	Newton	June 4, 1884.
Alden, H. L	Kansas City, Kas.	Jan. 13, 1885.
Alford, D. S	Lawrence	June 6, 1883.
Allensworth, J. T	Atchison	June 6, 1883.
Anderson, T. P	Kansas City, Kas.	Jan. 8, 1889.
Angevine, C	Mankato	June 6, 1883.
Austin, Edwin A	Topeka	Jan. 13, 1886.
Austin, James H	Kansas City, Mo	Jan. 9, 1883.
Baker, Sperry	Paola	June 6, 1883.
Barber, E. A	Humboldt	June 6, 1883.
Barker, George J	Lawrence	Jan. 13, 1885.
Benson, A. W	Ottawa	Jan. 9, 1883.
Benton, C. E	Iola	Jan. 8, 1890.
Bergen, A	Topeka	Jan. 11, 1887.
Bertram, E. S	Council Grove	Jan. 11, 1887.
Bertram, G. W	Oberlin	Jan. 13, 1885.
Bird, W. A. S	Topeka	June 6, 1883.
Bitting, C. C., jr	Abilene	Jan. 20, 1891.
Blue, R. W	Pleasanton	June 6, 1883.
Bond, T. L	Salina	Jan. 13, 1886.
Bowman, C. S	Newton	Jan. 8, 1890.
Bradford, S. B	Topeka	Jan. 3, 1888.
Brewer, David J	Leavenworth	Jan. 9, 1883.
Broderick, Case	Holton	Jan. 9, 1883.
Brown, Milton	Garden City	Jan. 8, 1890.
Brown, W. E	Newton	Jan. 8, 1890.
Buchan, W. J	Kansas City, Kas.	Jan. 9, 1883.
Bucher, Charles	Newton	June 4, 1884.
Buck, J. Jay	Emporia	Jan. 11, 1887.
Call, Henry L	Topeka	Jan. 8, 1889.
Campbell, A. B	Topeka	Jan. 12, 1887.
Campbell, W. C	Pueblo, Colo.	June 6, 1883.
Campbell, W. P	Wichita	Jan. 9, 1883.
Case, George H	Mankato	Jan. 9, 1883.
Chandler George	Independence	Jan. 9, 1883.
Clarke, Fabius M	Kansas City, Mo	June 6, 1883.
Clarke, W. B	Kansas City, Mo	Jan. 13, 1885.
Clogston, J. B	Eureka	Jan. 13, 1885.
Cornell, George G	Alma	Jan. 4, 1888.
Crozier, Robert	Leavenworth	Jan. 9, 1883.
Cunningham, E. W	Emporia	Jan. 8, 1890.
Cunningham, H. S	Salina	Jan. 8, 1889.
Dassler, C. F. W	Leavenworth	Jan. 8, 1889.
Day, John W	Topeka	June 6, 1883.
DeGeer, Mrs. M. E	Topeka	Jan. 12, 1887.

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ROLL OF MEMBERS—CONTINUED.

NAME.	ADDRESS.	ADMITTED.
Devenney, A. S.	Olathe	June 6, 1883.
Doster, Frank	Marion	Jan. 9, 1883.
Douglass, G. L.	Wichita	Jan. 8, 1890.
Douthitt, Wm. P.	Topeka	Jan. 13, 1885.
Earle, Lucien	McPherson	Jan. 8, 1889.
Eaton, Robert M.	Atchison	Jan. 8, 1889.
Ellis, A. H.	Beloit	Jan. 8, 1889.
Emery, R. M.	Seneca	Jan. 8, 1889.
Everest, A. S.	Atchison	Jan. 9, 1883.
Falloon, James	Hiawatha	June 6, 1883.
Fenlon, Thomas P.	Leavenworth	Jan. 9, 1883.
Foster, C. G.	Topeka	June 6, 1883.
Foster, F. H.	Topeka	Jan. 11, 1887.
Freeman, W. H. H.	Kansas City, Kas.	Nov. 28, 1883.
French, C O	Salt Lake City	Jan. 9, 1883.
Frith, J. Harvey	Emporia	Jan. 8, 1889.
Garver, T. F.	Salina	June 6, 1883.
Getty, George	Syracuse	Jan. 8, 1890.
Gillett, Almerin	Emporia	Jan. 13, 1883.
Gillette, F. E.	Kingman	Jan. 13, 1885.
Gilpatrick, J. H.	Leavenworth	Jan. 9, 1883.
Glasse, W. B.	Oswego	Jan. 9, 1883.
Gleason, H. W.	Hutchinson	Jan. 20, 1891.
Gleed, C. S.	Topeka	Jan. 13, 1886.
Gleed, J. W.	Topeka	Jan. 8, 1889.
Godard, A. A.	Clay Center	Jan. 8, 1890.
Graves, Charles B.	Emporia	Jan. 9, 1883.
Green, George S.	Manhattan	Jan. 11, 1887.
Green, H. T.*	Leavenworth	June 6, 1883.
Green, J. W.	Lawrence	Jan. 9, 1883.
Green, W	Leavenworth	June 6, 1883.
Griffin, Chas. T.*	Atchison	June 6, 1883.
Guthrie, John	Topeka	June 6, 1883.
Guthrie, W. W.	Atchison	Feb. 3, 1885.
Hadley, D. B.	Kansas City, Kas.	Jan. 8, 1889.
Hagerman, James	Kansas City, Mo.	Jan. 13, 1886.
Hallowell, J. R.	Wichita	June 6, 1883.
Hamilton, A. L. L.	El Dorado	Jan. 8, 1890.
Harkness, F. P.	Clay Center	Jan. 8, 1889.
Harris, Amos	Wichita	Jan. 9, 1883.
Harris, Vernon H.	Lawrence	Jan. 4, 1888.
Harrison, T. W.	Topeka	Jan. 3, 1888.
Haun, T. S.	Pittsburg	Jan. 8, 1889.
Hayden, Charles	Holton	June 6, 1883.
Hayden, Sydney	Holton	June 6, 1883.
Hayward, F. M.	Kansas City, Mo.	Jan. 13, 1886.
Hessin, John E.	Manhattan	Jan. 8, 1890.

*Deceased.

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ROLL OF MEMBERS — CONTINUED.

NAME.	ADDRESS.	ADMITTED.
Hick, R. S.	Westmoreland	Jan. 13, 1885.
Hogan, E. G.	Ravanna	Jan. 20, 1891.
Holt, Joel	Beloit	Jan. 3, 1888.
Hopkins, Scott	Horton	Jan. 3, 1888.
Horton, Albert H	Topeka	Jan. 9, 1883.
Houk, L	Hutchinson	Jan. 9, 1883.
Hudson, T. J	Fredonia	June 6, 1883.
Humphrey, H. J. *	Hutchinson	Jan. 12, 1887.
Humphrey, James	Junction City	Jan. 9, 1883.
Hurd, T. A	Leavenworth	June 6, 1883.
Huron, G. A	Topeka	Jan. 8, 1890.
Hutchings, C. F	Kansas City, Kas.	June 6, 1883.
Hutchinson, E	Marysville	Jan. 4, 1888.
Jetmore, A. B	Topeka	Jan. 11, 1887.
Jewett, E. B	Wichita	Jan. 8, 1889.
Johns, H. C	Larned	Jan. 8, 1890.
Johnson, J. B	Topeka	June 6, 1883.
Johnson, W. A	Garnett	June 6, 1883.
Johnson, J. G	Garnett	Feb. 3, 1885.
Johnston, W. A	Minneapolis	June 6, 1883.
Johnston, W. T	Paola	Jan. 13, 1886.
Jones, Howel	Topeka	Jan. 8, 1890.
Keeler, Henry	Topeka	Jan. 8, 1890.
Kellogg, L. B	Emporia	Jan. 13, 1885.
Kellogg, Mrs. J. M	Emporia	Jan. 8, 1889.
Kelso, David	Parsons	Jan. 13, 1885.
Kimball, C. H	Parsons	Jan. 11, 1887.
Kingman, Samuel A	Topeka	Jan. 13, 1886.
Larimer, J. B	Topeka	Jan. 8, 1890.
Lawrence, S. S	Guthrie, O. T.	Jan. 13, 1886.
Leland, Cyrus A	El Dorado	Jan. 9, 1883.
Lewis, C. C	Phillipsburg	Jan. 13, 1885.
Lewis, Ellis	Osage City	Jan. 9, 1883.
Little, E. C	Abilene	Jan. 8, 1890.
Little, G. F	Junction City	Jan. 8, 1890.
Littlefield, W	Ottawa	Jan. 13, 1885.
Lloyd, Ira E	Ellsworth	Jan. 13, 1885.
Lovitt, R. A	Salina	Jan. 13, 1886.
Madden, Dennis	Cottonwood Falls	Jan. 8, 1890.
Mahan, John H	Abilene	Nov. 28, 1883.
Maltby, J. C	Minneapolis	Jan. 11, 1887.
Martin, David	Atchison	Jan. 9, 1883.
Martin, John	Topeka	Jan. 9, 1883.
Mason, Rankin	Topeka	Jan. 8, 1890.
May, A. R	Washington	June 6, 1883.
McCammon, G. W	Valley Falls	Jan. 8, 1889.
McCleverty, J. D	Fort Scott	Jan. 9, 1883.
McClure, J. R	Junction City	June 6, 1883.
McDonald, C. W	Concordia	Jan. 8, 1889.

*Deceased.

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ROLL OF MEMBERS—CONTINUED.

NAME.	ADDRESS.	ADMITTED.
McFarland, E. A.	Lincoln	Jan. 8, 1890.
McFarland, J. D.	Topeka	June 6, 1883.
McLean, H. A.	Marion	Jan. 12, 1887.
McMullen, J. F.	Winfield	Jan. 8, 1890.
Miller, O. L.	Kansas City, Kas.	Jan. 8, 1889.
Milliken, J. D.	McPherson	Jan. 11, 1887.
Mills, F. D.	Kansas City, Kas.	Jan. 13, 1886.
Monroe, Charles	Los Angeles	June 6, 1883.
Moore, H. Miles	Leavenworth	June 6, 1883.
Nellis, D. C.	Topeka	Jan. 13, 1885.
Nicholson, M. B.	Council Grove	Feb. 3, 1885.
Osborn, S. J.	Wakeeney	Jan. 8, 1890.
Overmyer, David	Topeka	Jan. 8, 1889.
Patchin, A. L.	Stockton	Jan. 9, 1883.
Patterson, W. J.	Lawrence	Jan. 13, 1886.
Peck, George R.	Topeka	Jan. 9, 1883.
Peckham, Chas. J.	Winfield	Jan. 11, 1887.
Perry, W. C.	Fort Scott	June 6, 1883.
Pierce, H. A.	Topeka	Jan. 8, 1889.
Porter, Silas W.	Kansas City, Kas.	Jan. 3, 1888.
Powell, Omar	Washington	Jan. 3, 1888.
Pratt, W. H.	Phillipsburg	Jan. 9, 1883.
Prescott, J. H. *	Salina	Jan. 9, 1883.
Quinton, A. B.	Topeka	Jan. 4, 1888.
Quinton, E. S.	Topeka	Jan. 4, 1888.
Radcliffe, H. J.	Cottonwood Falls	Jan. 8, 1890.
Redd, George S.	Ness City	Jan. 8, 1889.
Redden, A. L.	El Dorado	Jan. 13, 1885.
Reed, Isaac G.	Wellington	Feb. 3, 1885.
Biggs, S. A.	Lawrence	Jan. 13, 1886.
Rightmire, W. F.	Topeka	Jan. 8, 1890.
Robinson, E. F.	Osborne	Jan. 8, 1890.
Robinson, R. G.	Holton	Jan. 11, 1887.
Rossington, W. H.	Topeka	Jan. 9, 1883.
Root, H. C.	Topeka	Jan. 8, 1889.
Scott, Henry W.	Larned	Jan. 8, 1889.
Scott, W. W.*	Emporia	Jan. 9, 1883.
Seabrook, S. L.	Topeka	Jan. 13, 1886.
Sedgwick, T. N.	Emporia	Jan. 8, 1889.
Seaver, B. A.	Troy	June 6, 1883.
Shafer, J. D.	Leavenworth	June 6, 1883.
Sheridan, John C.	Paola	Jan. 13, 1886.
Simpson, B. F.	Topeka	June 6, 1883.
Sluss, H. C.	Wichita	Jan. 9, 1883.
Smith, C. B.	Topeka	June 6, 1883.
Smith, Charles W.	Stockton	Jan. 13, 1885.
Smith, Clark A.	Cawker City	Jan. 9, 1883.

* Deceased.

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ROLL OF MEMBERS—CONCLUDED.

NAME.	ADDRESS.	ADMITTED.
Smith, G. P.	Humboldt	Feb. 3, 1885.
Smith, Wm. R.	Atchison	Jan. 13, 1886.
Smith, W. W.	Topeka	Jan. 13, 1885.
Snoddy, J. D.	La Cygne	Jan. 9, 1883.
Spencer, Chas. F.	Topeka	Jan. 4, 1888.
Spencer, James M.	Topeka	Feb. 3, 1885.
Stackpole, Henry W.	Clay Center	Jan. 20, 1891.
Stambaugh, W. S.	Abilene	Jan. 20, 1891.
Stephens, N. T.*	Lawrence	Jan. 9, 1883.
Stevens, Hiram	Paola	Jan. 13, 1886.
Stewart, J. H.	Topeka	Jan. 4, 1888.
Stillwell, L.	Osage Mission	June 6, 1883.
Strang, J. C.	Larned	Jan. 9, 1883.
Sturgis, F. W.	Concordia	Jan. 9, 1883.
Summerfield, M.	Lawrence	Jan. 4, 1888.
Sutherland, J. W.	Neodesha	June 6, 1883.
Talcott, H. W.	Iola	Jan. 9, 1883.
Taylor, Irwin	Topeka	Jan. 13, 1886.
Thacher, S. O.	Lawrence	Jan. 9, 1883.
Thompson, L. H.	Norton	Jan. 8, 1890.
Tillotson, D. C.	Topeka	Jan. 8, 1889.
Tomlinson, J. C.	Atchison	Jan. 13, 1886.
Torrance, E. S.	Winfield	Jan. 9, 1883.
Troutman, J. A.	Topeka	Jan. 12, 1887.
Valentine, D. M.	Topeka	Jan. 9, 1883.
Vandeveer, G. A.	Hutchinson	Jan. 8, 1890.
Waggener, B. P.	Atchison	June 6, 1883.
Wagstaff, W. R.	Paola	Jan. 9, 1883.
Wall, T. B.	Wichita	Jan. 8, 1890.
Walrond, Z. T.	Osborne	Jan. 11, 1887.
Ware, E. F.	Fort Scott	June 6, 1883.
Waterbury, Ed. S.	Emporia	Jan. 13, 1885.
Webb, L. J.	Topeka	Jan. 4, 1888.
Webb, W. C.	Topeka	Jan. 9, 1883.
Webb, W. D.	Atchison	Jan. 13, 1885.
Welch, R. B.	Topeka	Jan. 8, 1890.
Wells, Abijah	Seneca	Jan. 8, 1889.
Wheat, L. B.	Leavenworth	June 6, 1883.
White, J. M.	Howard	June 6, 1888.
White, T. J.	Kansas City, Kas.	Jan. 20, 1891.
Whiteside, H.	Hutchinson	Jan. 20, 1891.
Wilcockson, K. E.	Oakley	Jan. 8, 1890.
Wilder, George C.	Manhattan	June 6, 1883.
Winslow, C. S.	Marion	Jan. 20, 1891.
Wilson, A. S.	Sioux City, Ia.	Jan. 9, 1883.

*Deceased.

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NINTH ANNUAL MEETING

OF THE

BAR ASSOCIATION

OF THE

STATE OF KANSAS.

HELD IN THE CITY OF TOPEKA,

JANUARY 25 AND 26, 1892.

TOPEKA, KANSAS:
GEO. W. CRANE & CO., PRINTERS AND BINDERS.
1892.

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OFFICERS FOR THE YEAR 1892.

PRESIDENT,	T. F. GARVER.
VICE-PRESIDENT,	J. W. GREEN.
SECRETARY,	C. J. BROWN.
TREASURER,	HOWEL JONES.

EXECUTIVE COUNCIL.

W. C. WEBB, CHAIRMAN.

WINFIELD FREEMAN,	E. W. MOORE.
C. ANGEVINE,	A. A. HARRIS.

DELEGATES TO AMERICAN BAR ASSOCIATION.

JAMES HUMPHREY, F. P. HARKNESS, J. D. MILLIKEN.

DELEGATES TO NATIONAL BAR ASSOCIATION.

T. N. SEDGWICK, DAVID OVERMYER, S. W. VANDIVERT

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OFFICERS OF PREVIOUS YEARS.

OFFICERS FOR THE YEARS 1883-4.

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Vice-President...N. T. STEPHENS. | *Treasurer*.....D. M. VALENTINE.

Executive Council.

D. M. VALENTINE, *Chairman*, JAMES HUMPHREY, DAVID MARTIN,
J. H. GILLPATRICK, FRANK DOSTER.

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Vice-President...W. A. JOHNSTON. | *Treasurer*.....D. M. VALENTINE.

Executive Council.

D. M. VALENTINE, *Chairman*, JAMES HUMPHREY, DAVID MARTIN,
E. S. TORRANCE, L. HOUK.

Delegates to American Bar Association.

A. S. EVEREST, A. L. REDDEN, JAMES HUMPHREY.

OFFICERS FOR THE YEAR 1886.

President.....ALBERT H. HORTON. | *Secretary*.....JOHN W. DAY.
Vice-President...E. S. TORRANCE. | *Treasurer*.....D. M. VALENTINE.

Executive Council.

W. A. JOHNSTON, *Chairman*, JOHN GUTHRIE, A. W. BENSON,
M. B. NICHOLSON, JOHN H. MAHAN.

Delegates to American Bar Association.

DAVID J. BREWER, W. H. ROSSINGTON, FRED D. MILLS.

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OFFICERS FOR THE YEAR 1887.

President.....SOLON O. THACHER. | *Secretary*.....JOHN W. DAY.
Vice-President...HENRY C. SLUSS. | *Treasurer*.....D. M. VALENTINE.

Executive Council.

W. A. JOHNSTON, *Chairman*, C. B. GRAVES, ROBERT CROZIER,
GEORGE S. GREEN, T. F. GARVER.

Delegates to American Bar Association.

W. W. GUTHRIE, A. L. REDDEN, T. A. HURD.

OFFICERS FOR THE YEAR 1888.

President.....W. A. JOHNSTON. | *Secretary*.....JOHN W. DAY.
Vice-President...EUGENE F. WARE. | *Treasurer*.....D. M. VALENTINE.

Executive Council.

JOHN GUTHRIE, *Chairman*, S. B. BRADFORD, GEORGE J. BARKER,
J. W. ADY, J. H. MAHAN.

Delegates to American Bar Association.

SOLON O. THACHER, ALBERT H. HORTON, HENRY C. SLUSS.

OFFICERS FOR THE YEAR 1889.

President.....JOHN GUTHRIE. | *Secretary*.....CHAS. S. GLEED.
Vice-President...T. F. GARVER. | *Treasurer*.....D. M. VALENTINE.

Executive Council.

B. F. SIMPSON, *Chairman*, W. W. SCOTT, L. B. KELLOGG,
A. W. BENSON, CHAS. S. HAYDEN.

Delegates to American Bar Association.

J. W. GREEN, J. H. GILLPATRICK, CHARLES MONROE.

Delegates to National Bar Association.

ROBERT CROZIER, M. B. NICHOLSON, ROBERT M. EATON,
GEO. S. GREEN, H. L. ALDEN, J. W. ADY.

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OFFICERS FOR THE YEAR 1890.

President.....ROBERT CROZIER. | *Secretary*.....C. J. BROWN.
Vice-President...CHAS. B. GRAVES. | *Treasurer*.....HOWEL JONES.

Executive Council.

B. F. SIMPSON, *Chairman*, JOHN GUTHRIE, CASE BRODERICK,
W. W. SCOTT, R. M. EATON.

Delegates to American Bar Association.

GEORGE S. GREEN, L. B. KELLOGG, W. C. PERRY.

Delegates to National Bar Association.

W. A. JOHNSTON, B. P. WAGGENER, A. H. ELLIS,
J. W. GLEED, G. F. LITTLE, J. F. MCMULLEN.

OFFICERS FOR THE YEAR 1891.

President.....D. M. VALENTINE. | *Secretary*.....C. J. BROWN.
Vice-President...L. HOUK. | *Treasurer*.....HOWEL JONES.

Executive Council.

T. F. GARVER, *Chairman*, E. W. CUNNINGHAM, M. B. NICHOLSON,
J. R. MCCLURE, W. P. DOUTHITT.

Delegates to American Bar Association.

T. F. GARVER, B. P. WAGGENER, J. H. GILLPATRICK.

Delegates to National Bar Association.

W. A. JOHNSTON, A. H. ELLIS, G. F. LITTLE,
ROBERT CROZIER, J. W. GLEED, J. F. MCMULLEN.

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MINUTES OF THE NINTH ANNUAL MEETING.

TOPEKA, KANSAS, January 25, 1892.

The ninth annual meeting of the Bar Association of the State of Kansas was called to order at 7:30 o'clock P. M., in the Senate Chamber, with the President, D. M. Valentine, in the chair.

The reading of the minutes of the last meeting was dispensed with.

The Executive Council reported the names of the following applicants for membership, and recommended their election; and on motion the report was adopted and the persons named were elected:

Francis C. Price, Ashland; Chas. W. Webster, McPherson; W. H. McBride, Osborne; Edwin White Moore, Wichita; R. F. Thompson, Minneapolis; N. H. Loomis, Topeka; Sam. Kimble, Manhattan; G. F. Grattan, McPherson; J. F. Thompson, Sabetha; J. G. Egan, Topeka; A. M. F. Randolph, Burlington; S. W. Vandivert, Kinsley; L. S. Ferry, Topeka; O. J. Wood, Topeka; Winfield Freeman, Kansas City; Eugene Wolf, Topeka; John W. Shartel, Winfield; John W. Roberts, Hutchinson; W. F. Guthrie, Atchison; Wm. S. Roork, Sharon Springs; W. T. Bland, Atchison.

The Executive Council made the following report concerning the condition of the treasury of the Association, and as to delinquent members:

The Executive Council respectfully report that, since the last annual meeting of the Association, it has made special effort to better the financial condition of the Association, and has been reasonably successful. A year ago we were resting under liabilities aggregating nearly six hundred dollars, and had but $102.98 in the treasury. In accordance with the resolution adopted at the last annual meeting, all delinquent members were duly notified to make immediate pay-

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ment of delinquent dues and membership fees. From these sources a sufficient amount has been collected to pay all liabilities outstanding and the current expenses of the year.

The Treasurer's report and accounts have been examined, and we find that during the year he has received from all sources the sum of $632.98, and has paid out by order of the Executive Council the sum of $572.75, leaving in the treasury the sum of $60.23, as stated in his report.

There have been allowed by the Council certain bills amounting to thirty-five or forty dollars, which have not yet been paid; so that we close the year having a small sum in the treasury after all liabilities are paid.

Quite a large number of members are in arrears for the dues of 1890 and 1891, and a few for 1891. In most cases the failure to respond to the notices given is simply negligence, but still a source of annoyance to those having the affairs of the Association in charge. It is believed that many still in default will attend to the payment of their dues at this meeting, and a further report of delinquents will be made during the session. The following persons have either removed from the State, or fail without any excuse to discharge their obligation to the Association in the matter of dues: E. A. Barber, G. J. Barker, C. C. Bitting, jr., membership fee unpaid; W. E. Brown, H. S. Cunningham, Mrs. M. E. DeGeer, C. O. French, Almerin Gillett, W. Green, C. W. McDonald, D. C. Nellis, H. A. Pierce, W. H. Pratt, G. P. Smith, J. H. Stewart, H. W. Talcott, E. S. Torrance, A. S. Wilson; and the Council recommend that their names be dropped from the roll of membership.

The report was adopted, and the names recommended to be dropped from the roll of members were ordered to be stricken therefrom.

The Judiciary Committee, through its chairman, George S. Green, reported to the Association a review of the legislation of the several States during the past year.

Annual address of the President was delivered by D. M. Valentine.

An address on "Supreme Court Records and Reports" was delivered by W. A. Johnston.

The Association adjourned till 10 o'clock A. M. to-morrow (January 26), at which hour it reconvened in the Senate chamber.

JANUARY 26 — MORNING SESSION.

On motion of George S. Green a committee of five on nomination of officers for the ensuing year was appointed by the

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president, as follows: George S. Green, J. D. Milliken, W. A. Johnston, W. P. Douthitt, and J. D. McCleverty.

Addresses were delivered by J. D. McCleverty, on "Supreme Court Records and Reports"; by James Humphrey and J. W. Green, on "Legal Education and Qualification for Admission to the Bar"; by John E. Hessin, on "Fraud through the Confidential Relationships."

The Association adjourned till 2 o'clock P. M., at which hour it reconvened in the Senate chamber.

JANUARY 26 — AFTERNOON SESSION.

The annual address, on the subject of "Abuses of Corporate Privileges," was delivered by Judge Seymour D. Thompson, of St. Louis, Mo.

E. W. Moore delivered an address on the pending proposition for a Constitutional Convention.

The special committee appointed at the last annual meeting to urge upon the Legislature the importance of relief from the delay in appellate litigation submitted the following report, which on motion of Silas Porter was received, and ordered to be spread upon the record:

To the President of the Bar Association of the State of Kansas: Your Committee on Legislation to provide relief for the Supreme Court, appointed by the President at the close of the last meeting, would respectfully submit the following report.

After careful consideration and investigation of the matters referred to us, we prepared and submitted to the Senate and House of Representatives, respectively, the reports, copies of which are hereto attached, marked Exhibits A, B, and C. The Lieutenant Governor on behalf of the Senate acknowledged the receipt thereof in writing, and the Speaker of the House of Representatives orally informed a member of your committee that said reports had been received by the House; and the records of the two houses show that the reports were referred in each to the Judiciary Committee.

Neither house acted upon the suggestions contained in the reports to them of your committee, except in respect to a constitutional convention, a resolution for which passed both houses of the Legislature. In the Senate a bill styled Senate bill 360 was passed. It was entitled "An act to establish a Court of Appeals, to define its jurisdiction and power, and to regulate appeals to the said court and to the Supreme Court."

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As this bill never became a law, it is not necessary to recite in detail its provisions. It provided generally for a Court of Appeals intermediate the District and Supreme Courts, to sit at four different points in the State once in each year.

Sitting at Salina, Wichita, Fort Scott and Leavenworth for the hearing of causes, and then adjourning to the capital for the purpose of preparing and delivering opinions. To be composed of five judges, each to receive a salary of three thousand dollars per annum. A remarkable feature of this bill was, that either as amended or as distinctly proposed to be amended in the House, it named the judges who were to thus be appointed under it by the Legislature, three of whom were at the time members of the Legislature—two in the Senate and one in the House—and one of these was the author of the bill. This bill passed the Senate finally upon the 2d day of March, 1891, and was messaged to the House and received by the House on the day following, read a first and second time, and referred to the committee of the whole. While pending before the committee of the whole, Mr. Rightmire, who was named as one of the proposed judges by the proposed amendments in the House, sent in to the House a communication declining to act as one of the judges of said court. Whereupon the further consideration of the bill was indefinitely postponed in the House of Representatives, and no further action was taken upon the subject of the Court of Appeals by the Legislature.

On March 7th, the Committee on Judiciary for the House reported upon the memorial and report addressed to the House by your committee, in which report the said Judiciary Committee say that the recommendations embraced in the report of the committee of the Bar Association were fully complied with by a bill amending the civil code, which it is alleged had passed the House. No bill, however, of that character, ever became a law.

Your committee would further report that in its opinion no member of the House or Senate knew anything whatever respecting the contents of its said memorial and report, except the members of the Committee on Judiciary for the House and Senate, as said report was never published in any of the newspapers.

Several members of the committee requested its publication upon the ground that it was a matter of general interest to the State, but for some reason the representatives of the press did not manifest the same interest in the subject which actuated your committee, and so neither the Legislature nor the people ever knew to this day that a committee of the Bar Association of the State of Kansas had made any recommendation whatsoever respecting legislation for the relief of the Supreme Court.

Your committee, having discharged its duty to the best of its ability, respectfully submits this report, and asks to be discharged from further service in this behalf.

DAVID OVERMYER.
JOHN D. MILLIKEN.
HOWEL JONES.
W. F. RIGHTMIRE.

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EXHIBIT A.

To the Legislature of the State of Kansas: The undersigned having been appointed a committee by the Bar Association of the State of Kansas to submit to the Legislature suggestions respecting the over-crowded condition of the docket of the Supreme Court, and the best and most practicable means of relieving the same, have had the subject under consideration, and respectfully submit to the Legislature the following as the result of their deliberations, and pray that the Legislature may give to this subject the consideration which its importance demands.

We find that there are now upon the docket of the Supreme Court 1,565 cases; that the three judges and the three commissioners are able to dispose of about 500 cases annually, to which must be added 75 to 100 motions; that at this rate it would require three years to dispose of the business now on the docket if no new cases were filed; that in the last year there were filed 892 cases, and that with the growth and development of the State the volume of business in the Supreme Court must continue to increase for many years to come. That the condition of the docket of the Supreme Court is such as to demand prompt and efficient measures, looking to both temporary and permanent relief, is too plain to admit of dispute.

Section 18 of the bill of rights provides that "All persons for injuries suffered in person, reputation or property shall have remedy by due course of law. And justice shall be administered without delay." This provision of the constitution is alike binding upon the undersigned, who, as members of the legal profession, are sworn to support the constitution, and upon every member of the Legislature, as every member has taken that same oath.

With a subject so grave and momentous as the administration of justice we can neither palter nor temporize, but must address ourselves to the discharge of the duties with reference to it without fear, favor or affection, sympathy, sentiment or partiality, conscious as we are that the prompt and impartial administration of justice is the only security for the rights of any. The same adequate and complete remedy, the same measure of redress, must be awarded with undeviating certainty and unfaltering firmness to all men, whether weak or strong, rich or poor, high or low. We are not unmindful that there is a feeling entertained by some very worthy persons that the crowded condition of the Supreme Court docket, and the delays which have been and will be occasioned thereby, are to be regarded with favor as furnishing delay and immunity to oppressed debtors from the consequences of their obligations and the demands of their creditors. However much we may sympathize with oppressed and harried debtors, yet we must not forget that the constitutional guaranty of speedy justice for all can never be surrendered by a free people, and that it cannot be maintained if it may be suspended and bartered away from time to time upon alleged emergencies and special necessities. Means must be found to protect debtors from the rapacity of remorseless creditors without the destruction and annihilation of constitutional rights far dearer to the poor and humble than to the rich and powerful, for it must be borne in mind that the same conditions which now work a practical denial of justice, while they may be apparently ad-

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vantageous to a debtor to-day, may be invoked to-morrow to defeat the same debtor when he seeks to enforce an honest demand against some powerful individual or corporation.

The powerful corporations of the State are well pleased with the present condition of things, as long delays enable them to wear out their weaker adversaries with the menace of a perpetual suspension of their rights and thus force compromises and avert prosecutions, to the great loss and injury of those who are too weak to endure the "law's delay."

This committee cannot assent to the idea sometimes advanced, of relieving the Supreme Court by increasing the amount which shall be in controversy before an appeal can be taken to that court. While it is true that some of the smaller cases may, as has been suggested, be the result of neighborhood quarrels, yet it is equally true that the litigation even in cases of great magnitude is often prompted by motives no more worthy, and it frequently happens that small cases involve matters of greatest concern to poor and worthy persons.

In some of the States the law has expressed its disapproval of the abuse of the privilege of appeal to the court of last resort by providing that in case the judgment of the court below shall be affirmed, and the Supreme Court shall be of opinion that the appeal was not made in good faith, but purely for delay, said court shall add to the amount a certain sum as a penalty — say ten per cent. upon the amount of the judgment. Such statutes seem to work well and to visibly diminish the number of unmeritorious appeals.

Nor do we think that relief should be sought by increasing the number of the Supreme Court commissioners. It is no disparagement to the able and honorable men who occupy that position to say that the very nature of their office as an alleged arm of the Supreme Court, and yet no part of it, subjects their decisions to a degree of criticism, and attaches to them a degree of dissatisfaction, which would not be the case if the same decisions were made by the same men sitting as members of the court.

Many good lawyers believe that the commission is unconstitutional, and viewed in any light it would seem to be a temporary expedient which, being at the same time a serious innovation upon accepted methods of unquestionable constitutionality, should not be extended or enlarged.

As a measure of permanent relief, the committee are unanimously of the opinion that this Legislature should take the proper steps for the calling of a constitutional convention; when the people in their primary capacity can say what shall be the jurisdiction of their highest court, what number of judges may be necessary to do the work thus assigned to them, and what the principles and policies which shall pervade the law.

As a matter of temporary relief we recommend the establishment — for a limited period — of a court of appeals, which shall have exclusive jurisdiction of all proceedings in error from the district court in civil cases, when the amount in controversy in court of appeals, exclusive of costs, does not exceed the sum of fifteen hundred dollars ($1,500). The judges thereof to be three in number, and to be appointed by the Governor to serve during the continuance of said court, which should be limited to a period not to exceed three years. Said

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judges should be of opposite politics each from the other, and be chosen one from each of the three political parties casting the highest number of votes in this State at the last preceding election.

Such a court would greatly relieve the Supreme Court, and enable it and the commission to devote the most of the time to the consideration of cases now on the docket of the Supreme Court, to the great relief of litigants who have suffered long and intolerable delays, which mar the plans, ruin the endeavors and dissipate the hopes of individuals.

The foregoing is respectfully submitted to the Legislature by the undersigned in discharge of the duty imposed upon them by the Bar Association of the State of Kansas, and with the hope that these suggestions may be at least of some assistance to the Legislature in determining the course to be pursued by that body in respect of a subject the consideration of which will not longer admit of delay.

DAVID OVERMYER.
WM. F. RIGHTMIRE.
J. D. MILLIKEN.
H. A. MCLEAN.

EXHIBIT B.

To the Legislature of the State of Kansas: The undersigned have been appointed upon a committee of the Bar Association of the State of Kansas for the purpose of suggesting to your honorable body some practical method by which the over-crowded condition of the Supreme Court docket could be relieved. There are now upon the docket of the Supreme Court 1,565 cases. The Supreme Court as now constituted is able to decide and write opinions in about 500 cases annually, in addition to the disposal of motions and other current business. There were filed with the Clerk of the Supreme Court in 1890, eight hundred and ninety-two (892) cases.

If the Supreme Court were not required to write opinions in all cases, many more cases could be disposed of annually. We would therefore suggest that sections 4661 and 4662 of the General Statutes of 1889 be amended to read as follows:

"4661. It shall be the duty of the judges of the Supreme Court to prepare and file with the papers in each case an opinion of the court in writing upon the questions of law arising in the case; but no opinion shall be written unless a majority of the judges determine that the points to be decided will add something of importance to the jurisprudence of the State. And the opinion, when written, shall be treated as a part of the record in the case, and no costs shall be charged therefor, except for copies thereof ordered by a party; and no mandate shall be sent to the court below until the opinion, when one is written, has been filed.

"4662. A syllabus of the points of law decided in any case in the Supreme Court shall be stated in writing by the judge delivering the opinion of the court, and filed with the papers, which shall be confined to the points of law arising from the facts in the case that have been determined by the court; but no syllabus is to be prepared unless a majority of the judges determine that the points of the law to be decided will add something of importance to the jurisprudence of the State; and when a syllabus is prepared it shall be submitted to the judges concurring therein, for revisal, before filing thereof, and shall be filed with the papers without alteration unless by consent of the judges concurring therein; and a copy of such syllabus shall in all cases, when prepared, be sent to the court below by the Clerk of the Supreme Court, with the mandate provided for the last section."

If the above-mentioned sections are amended as suggested above, then, in

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the opinion of the undersigned, the Supreme Court will be enabled to work off the arrears of cases, and to keep up with the current business without increasing the burdens of the people by taxation or multiplying the number of courts.

Respectfully submitted. HOWEL JONES.

EXHIBIT C.

Mr. Howel Jones, a member of the committee appointed by the Bar Association, declined to sign the report made by the other members of the committee, for the reason that he did not approve of the recommendation for a court of appeals, holding the foregoing plan submitted over his own signature to be preferable.

Mr. Jones's suggestions are in my judgment worthy of very careful consideration. DAVID OVERMYER, *Chairman.*

The Memorial Committee, through J. W. Sutherland, its chairman, presented the following resolutions, which on motion of Sam. Kimble were adopted and ordered to be spread upon the record:

Your committee would respectfully submit the following report:

Since the last meeting of this Association the Angel of Death has been among us and removed from our midst and from the ranks of our profession Hon. Lawrence D. Bailey, Hon. John H. Prescott, and Hon. Amos Harris; and we mourn their departure from this life, not only as a loss to the Association, but to the profession and to the State. Hon. Lawrence D. Bailey was born at Sutton, Merrimack County, New Hampshire, August 26th, 1819. Received an academic education; was admitted to the bar in 1846. He was among the early settlers of Kansas, coming here in April, 1857, while it was still a Territory, and settling upon a claim in Douglas county. The same year he removed to Emporia, and opened the first law office in that part of the Territory. He served as a member of the Legislature for a number of years, and in 1859 was elected one of the associate justices of the Supreme Court, which position he held for eight years. He was the founder of the *Kansas Farmer*, and was for four years president of the State Agricultural Society. As a judge he received the universal respect of the people as an able expounder of the law, and an honest, upright judge. He died at Lawrence, on the 15th day of October, 1891. In the death of Judge Bailey this Association loses an honored member; and your committee would respectfully recommend that this Association appoint a committee to present the matter of his death to the Supreme Court, that they may take action thereon and spread upon the records of the court appropriate resolutions.

The Hon. John H. Prescott was born at Pittsfield, New Hampshire, October 14, 1840. He was reared on a farm, and educated himself at the Academy at Pittsfield. In 1862 he went into the Union army, and after the close of the war removed to Saline county, Kansas, in 1866. He served as county attorney of that county and as a member of the State Senate. Upon the organization of

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the Fourteenth Judicial District, in 1872, he was appointed judge of that court, where his clearness, promptness and legal ability won for him the admiration of the people of that district. He held the office until 1884, when he declined the honor of an election for the fourth term. He died July 5, 1891.

Hon. Amos Harris was born in Ohio, and removed from there to Iowa while a young man, where he resided until 1874, when he removed to Wichita, and resided there engaged in the active practice of the law until the time of his death, which occurred February 2, 1891. While in Iowa he was in the Legislature of that State, and a member of the Constitutional Convention. He was appointed judge of the Eighteenth Judicial District Court of this State upon its organization, February 12, 1883. The deceased was an able lawyer, a genial, social gentleman, and always made friends wherever he was known.

Each of our brethren had seen many years of useful and active service in the profession and upon the bench, and had well earned the reputation he enjoyed as an honored member not only of the legal profession, but of that other and highest of all positions, an able, fearless, honest, and upright judge. We extend to the families of our deceased brothers our sincere and heartfelt sympathy in their bereavement.

In pursuance of the recommendation of the Memorial Committee in the above resolutions, the President appointed the following committee to present to the Supreme Court suitable resolutions concerning the death of ex-Justice L. D. Bailey: S. A. Kingman, J. W. Sutherland, and J. W. Day.

On motion of G. L. Douglass, the Executive Council was instructed to ask of the railroads of the State special rates for those desiring to attend the next annual meeting of this Association.

On motion of L. B. Kellogg, the following committee was appointed to investigate the work being done by the law department of the State University, and to report to the next meeting of this Association the result of such investigation: L. B. Kellogg, James Humphrey, and F. P. Harkness.

E. W. Cunningham presented the following resolutions, which on his motion were adopted:

Resolved, That this Association request the Supreme Court to enact such rules as it shall deem advisable for the purpose of regulating and aiding in the preparation of "cases-made," to the end that the preparation of such cases may be simplified as much as possible, and divested of redundant and superfluous matter.

Resolved, That a committee of three be appointed by this Association, who

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shall, in connection with the members of the Supreme Court, form a commission to take into consideration what additional legislation is necessary for the purpose of simplifying the preparation and presentation of a case on error to the Supreme Court; and if such commission shall determine that additional legislation is necessary or desirable to accomplish such end, to prepare and present to the next Legislature a bill for that purpose.

On motion of W. F. Guthrie, it was ordered that a special committee of five be appointed by the president to report to the next meeting of this Association such legislation to control and regulate admissions to the bar, as in their judgment is desirable and necessary.

On motion of G. F. Little, it was ordered that a committee of three be appointed by the president to attend, as delegates from this Association, a meeting of delegates from all English-speaking nations, at Chicago, in October, 1892, as recommended by the National Bar Association.

The committee on nomination of officers for the ensuing year reported as follows:

For President—T. F. Garver.

For Vice-President—J. W. Green.

For Treasurer—Howel Jones.

For Secretary—C. J. Brown.

For Executive Council—W. C. Webb, Winfield Freeman, C. Angevine, E. W. Moore, and A. A. Harris.

For Delegates to the American Bar Association—James Humphrey, F. P. Harkness, and J. D. Milliken.

For Delegates to the National Bar Association—T. N. Sedgwick, David Overmyer, and S. W. Vandivert.

These nominations were unanimously ratified by the Association.

The following special and standing committees were appointed by the President, T. F. Garver:

Judiciary Committee—L. Houk, E. F. Ware, W. J. Patterson, J. C. Maltby, George S. Redd.

Committee on Amendments to the Laws—J. W. Gleed, C. W. Smith, C. S. Bowman, G. L. Douglass, K. E. Wilcockson.

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Memorial Committee—Silas W. Porter, Charles Hayden, R. A. Lovitt.

Special Committee on Legislation to Regulate and Control Admissions to the Bar—W. F. Guthrie, J. W. Green, T. B. Wall, W. S. Stambaugh, J. A. Troutman.

Delegates to the International Meeting of Lawyers in Chicago in October, 1892, (as recommended by National Bar Association)—G. F. Little, John Martin, J. C. Tomlinson.

The addresses delivered before the Association at this meeting, including the formal report of the Judiciary Committee, appear in the following pages.

Adjourned.

C. J. BROWN, *Secretary.*

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ADDRESSES.

MUNICIPAL GOVERNMENT.

BY DANIEL M. VALENTINE, PRESIDENT.

Gentlemen of the State Bar Association: It is expected that the other officers of this Association, who are required to make special reports, will, in their reports, give full and complete information concerning the condition of the Association, and therefore it is not deemed necessary that I should say anything with regard thereto; hence I have chosen a subject having no direct or particular relation to the affairs of the Association, but coming only within its general aims and objects—the subject of the government of municipal corporations. What I shall say with regard to this subject will not have reference to any particular municipal corporation, nor to municipal corporations at any particular time, but to municipal corporations in general as they have existed and been administered from the earliest periods of time. In my opinion this subject is one of very great importance. All the people of every country, whether residing inside or outside of municipal corporations, are more or less affected by their governments. Every person who resides within, or has property in, or comes temporarily within the corporate limits of any incorporated city, is subjected for the time being to its dominion and control, and to its benefits and annoyances; and all people must occasionally visit cities. Cities also have a very large influence in the control of the State and National governments within whose territorial jurisdiction they are situated. This subject also demands attention for the further reason that municipal governments as compared with the State and National governments have largely hitherto been failures. It is to be hoped, however, that we may find the reasons for such failures, and also find the proper remedies therefor; and with reference to these matters I shall make some suggestions.

The earliest governments in the world were probably those founded upon family relations, patriarchal in character and of the simplest form. They were probably those of small tribes or clans, of roaming, predatory bands, without fixed homes or habitations, without any established industrial pursuits, and depending for their subsistence upon the precarious occupations of hunting, fishing, plundering, pillaging, and robbery. These primitive aggregations of men were generally hostile to each other, and engaged in continuous war, which seemed at that time to be the normal condition of human society, and their governments of course and necessarily assumed a militant character as contradis-

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tinguished from the more industrial types of later periods of time. Finally, as the world became more populous and the wants and needs of its multifarious inhabitants became greater and more varied, and as the means of subsistence became more difficult to obtain, the more numerous aggregations of men largely abandoned their former predatory and militant character, adopted more permanent homes and habitations, and assumed habits and pursuits of a more peaceful, quiet and industrial type. Then towns and villages were founded, and then governments for these towns and villages were established; and evidently these were the earliest governments of a local or territorial character ever established among men. Many of these towns and villages grew into cities, and some of them into great cities; and afterwards, by conquest and otherwise, many of them, with the intervening country, including the rural populations, were united into great territorial governments constituting states or nations. When these states or nations were created, all organizations, territorial or otherwise, included within their boundaries were subjected to their jurisdiction and control as inferior and subordinate organizations. Such are the forms of government in all civilized countries at the present time. In this State we have many and various kinds of subordinate organizations, including cities, counties, townships, school districts, road districts, etc., of a local or territorial character; and various other organizations of a *quasi* local character, and some not local at all; but all are subjected to the jurisdiction and control of the superior government of the State. We have as yet no large cities within the territorial boundaries of this State, but all our municipal organizations are growing; and the tendency for some years past, not only in this country but in all countries, has been that the urban populations have increased much more rapidly than the rural; and from this time on it is probable that as long as human beings shall exist upon the earth, a large proportion of the population of the world will be under the jurisdiction and control of local municipal governments.

Before proceeding to the special consideration of municipal governments, such as the governments of cities, towns, and villages, it might be well to say something concerning all governments, or governments in general. Evidently the best governments are those which secure to each individual citizen the greatest possible amount of liberty consistent with the equal freedom and the best interests of each and all; and generally, also, the best governments are those which govern the least, provided, of course, they govern enough to secure protection to the equal natural rights of each and all. And this protection means not only the protection of citizens as single individuals, but also their protection in all lawful associations, including families, copartnerships, private corporations, public corporations, *quasi* public corporations, etc.; and all these individuals and associations should be protected, not only from other individuals, but also from all other associations or aggregations, even if these other individuals or associations or aggregations should be the governing officers of the State or the Nation, or the municipal corporation where the parties reside, or the governing officers of any other kind of corporation or organization. It is the individual citizen in all cases for whose benefit and welfare governments should be established. We should seldom, if ever, consider citizens as existing

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for the benefit of their governments, but always their governments as existing for the benefit of the citizens. Also, as a corollary from the foregoing, I might further state that the best governments are those which leave to private enterprise everything which can and would be accomplished by private enterprise if let alone; for all experience has shown that private enterprise will accomplish whatever it undertakes to do, far better and with greater economy than it ever has been done, or ordinarily could be done, by public agencies or instrumentalities. But all private enterprise must, to some extent, be under the control of the public. Even the private business of private individuals should be required to be so conducted as never to constitute an infringement upon any of the inherent rights of others. And there are classes of private enterprise which also partake of a public or *quasi* public nature, or greatly affect the public, such as the furnishing of facilities for travel and transportation, or the furnishing of water or food, or other necessaries of life, especially whenever these things partake of the nature of monopolies, which classes of private enterprise should always and continually be under the most vigilant control of ever-watchful public agencies. And here comes the greatest difficulty that ever confronts a governmental organization. It is the difficult problem of properly adjusting the boundary-lines between individual liberty and governmental control. Socialists of the extreme kind would give to the social aggregate when organized into government too much power — a boundless domination by the government over the individual, a social despotism destructive of individual liberty, a merging of the individual into the mass; while, on the other hand, anarchism would give to government too little power. In fact it would create a social chaos and relegate human society back to the unorganized condition of wild animals. The proper boundaries between individual liberty and governmental control are ever-varying and shifting lines, depending for their proper position upon the ever-varying and shifting conditions of human society, and the ever-varying wants and needs, and sentiments and instincts of the members of such society. Laws are always good or bad in proportion as they are in harmony or out of harmony with the conditions, the wants and needs, and the sentiments and instincts of the society for which they are enacted. Even laws suitable for angels might not, and probably never would, be proper laws for human beings.

I might also again state before proceeding further, that the National and State governments of this country have been fairly successful, and probably will continue to be so; while the governments of municipal corporations have generally been failures. Incompetency, unwarranted intermeddling, fraud, and corruption have largely attended city governments; while the reverse has generally been true with respect to the State and Federal governments. Why should this be? In cities we often find illegal voting, bribery at elections, elections controlled by the worst elements of society, by secret political organizations, and by other improper influences; and afterward we often find incompetent and bad men elected to office, and bribery, corruption, and villainy following in the administration of public affairs.

In this country some of the provisions for the government of municipal corporations are placed in the constitution of the State; others are placed in the

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statutes of the State; and others still are left to be placed in the municipal ordinances themselves. This is all proper enough, and all the provisions for the government of cities and their inhabitants should be published in books where every person interested in them could read them; and nothing should be considered as law until it has been published somewhere. In practice, however, it is often found that in municipal corporations a great many wrongful acts of public officers and a great deal of wrongful government take place outside of all law. Provisions concerning the government of municipal corporations are placed in the constitution principally for the reason that it has been found that municipal corporations need protection from unfortunate legislation nearly as much as the inhabitants of such corporations need protection from the inefficient and wrongful acts of their own governing officers and from the wrongful acts of private persons. Many of the members of the Legislature are elected from rural districts, and of course know but little of the wants or needs or modes of living or conditions of urban populations; and there are other members of the Legislature who know but little about such things, and care less. Hence much of the law regarding things which are peculiar to municipal corporations should be placed in the constitution, beyond the reach of the Legislature. The constitution of this State has attempted to provide protection to some extent with respect to both municipal corporations and their inhabitants. Section 2 of the Bill of Rights, and sections 1 and 5 of article 12 of the Constitution, read as follows:

"SEC. 2. All political power is inherent in the people, and all free governments are founded on their authority, and are instituted for their equal protection and benefit. No special privileges or immunities shall ever be granted by the Legislature which may not be altered, revoked or repealed by the same body; and this power shall be exercised by no other tribunal or agency."

"SEC. 1. The Legislature shall pass no special act conferring corporate powers. Corporations may be created under general laws, but all such laws may be amended or repealed."

"SEC. 5. Provisions shall be made by general law for the organization of cities, towns, and villages; and their power of taxation, assessment, borrowing money, contracting debts and loaning their credit shall be so restricted as to prevent the abuse of such power."

A disregard of these provisions of the constitution by the Legislature has often taken place, and while the courts in some cases are almost powerless to furnish a proper remedy, yet they have to a great extent been able to enforce the provisions of the first sentence of section 1 of article 12. In other words, the courts have uniformly held, whenever called upon to decide the question, that special acts of the Legislature attempting to confer corporate powers upon municipal corporations are wholly and absolutely void. The Legislature, however, still continues to occasionally pass such acts; but of course they will all be held to be void whenever they are reached by the courts. The Legislature has no power to pass any law for the government of any municipal corporation except a general law. It is probable that the power of the Legislature with respect to municipal corporations should be further abridged and restricted. Or in other words, much more of the law for the government of municipal corporations should be placed within the controlling provisions of the constitution, and much less of it should be left to the ever-changing notions of the Legisla-

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ture. As to the rights and obligations of municipal corporations concerning property interests, the Legislature should probably have no more power to interfere than it has to interfere with the like rights and obligations of other corporations or of private individuals. But wherever the laws governing municipal corporations may be placed, whether in the constitution or in the statutes, they should be greatly modified. The laws should be such that no officer or agent of a municipal corporation should be allowed to act or give advice officially with reference to any matter or thing affecting the corporation or its inhabitants in which he has any direct personal interest, or any interest as agent or attorney for another who has such direct personal interest. For instance, a councilman or an alderman should not be allowed to vote upon any matter or thing affecting directly his own personal interests. The mayor should not be called upon to approve or enforce any ordinance in which he might be directly interested. The city attorney should not be asked to give advice with reference to a controversy in which he has any interest on the other side. The city marshal should not be called upon as an officer to abate a nuisance in any case where he is interested in carrying it on, nor to perform any other act against his own interests; nor should a member of the board of health be permitted to give his opinion or advice, or to act in any case with reference to the purity of the water or milk or food or anything else furnished by himself or by a corporation or partnership of which he is a member. In all cases where an officer cannot properly act, some other officer should be authorized to perform his duties. A few of these cases are already provided for, but only a few. As to elections, something similar to the Australian manner of voting should be adopted, so that each elector would have the power to cast an absolutely independent vote, without reference to friend or foe, or to anything like intimidation or bribery or the bad influence of any kind of secret political organization, or any other bad influence; and each precinct should be so small that all the electors of the precinct could easily cast their votes in one day. And the form of government of municipal corporations should also be greatly modified and changed. At the present time nearly all the legislative power and much of the administrative power of cities are placed in the hands of one single body; and this is probably one of the greatest causes for the failures and the fraud and corruption frequently found in the administration of municipal affairs. In analogy with the Government of the United States and that of all the individual States, it would probably be very much better that the local governing power in cities should be composed of more than one body: for instance, one body called a Council, and the members thereof Councilmen; another body called the Board of Aldermen; and one officer called a Mayor. One member of the council should probably be elected in each precinct in each year for the term of one year. The city should be divided into alderman districts, each composed of two or three or more precincts, and one alderman should be elected in each of such districts every alternate year for a term of two years; and the mayor should be elected every third year, by the whole city, for a term of three years. The elections for aldermen should also be so arranged that one-half would be elected in the odd-numbered years and the

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other half in the even-numbered years, so that one-half, at least, of the aldermen should always have had some previous experience. All these officers, however, might be elected for longer periods of time if it were thought advisable. Almost everything to be done in cities where the constitution and the statutes permit the city authorities to prescribe the manner of doing it should be done under the provisions of general ordinances; and these ordinances, before they should have any force or effect, should receive the approval of a majority of each of the aforesaid bodies and of the mayor, and be published; and neither body should be allowed to pass an ordinance on the day of its introduction into such body; and the mayor should not be allowed to approve any ordinance until at least one day after its passage by both bodies. This manner of passing ordinances would give an opportunity for proper deliberation and discussion, which often does not take place under the present system of passing ordinances. The regular meetings of the councilmen and aldermen should be at the same time, and not oftener than once in every three months; and special meetings should be held only in cases of emergency of great importance, and only when called by the mayor. The principal officers should probably be elected by the people; but those to be appointed should be appointed by the mayor, by and with the consent of the aldermen; and the mayor should also have the power absolutely to suspend officers — except perhaps members of boards — for incompetency and official misconduct, including corruption and neglect of duty, and to remove such officers in any case by and with the consent of the aldermen. And some mode of impeachment and for the suspension or removal of the mayor, whenever he is found guilty of misconduct in office, should be adopted.

Also among the reasons for the misgovernment of municipal corporations are the more numerous temptations to wrong-doing presented to the officers of cities than to the officers of the State or Nation, and the less interest and watchfulness taken by the people of cities in their municipal governments than in their State and National governments. Among the temptations offered for fraud and corruption in municipalities are the granting of franchises and privileges to private corporations, partnerships, and individuals; the improvements of streets and public grounds; the construction of sewers and the making of other provisions for the improvement of the sanitary conditions of the corporation; the furnishing or providing regulations for the furnishing of light, heat, water, etc.; and the regulations for travel and transportation over the streets and alleys, including the same for all kinds of railways, hacks, drays, etc.; the providing for or regulating public libraries, museums, hospitals, asylums, schools, etc.; and in imposing special taxes or assessments upon property-owners and in imposing license taxes upon the different kinds of trade and business. It seems strange that the people of municipal corporations do not take as much interest in their local municipal governments as they do in their State and National governments, for the benefits and annoyances of their local municipal governments are much closer, reach the individuals much oftener, and affect their interests in a vastly greater number of ways and instances than the benefits and annoyances of the State and Federal governments do. Yet such is the case.

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In conclusion, I would say that I do not think that it is possible to suppose that the present kind of imperfect municipal governments shall always continue. With fairly good constitutional and statutory provisions for the government of municipal corporations, such as I have already suggested; with constitutional and statutory provisions insuring fair and honest elections, and requiring that everything done by the municipal corporations themselves shall be done only under the provisions of the constitution and the statutes and general ordinances, passed by each of two separate municipal bodies and approved by the mayor, and insuring that such ordinances shall not be passed, or have force or effect, or become laws without opportunities having first been given for full deliberation and discussion, and until such ordinances shall have been published, then I would expect fairly good municipal government — and I shall not expect it until something of this kind takes place.

ABUSE OF CORPORATE PRIVILEGES.

BY SEYMOUR D. THOMPSON, OF MISSOURI.

THE QUESTION STATED.

For many years the question has been addressing itself to the American people, and pressing with more and more earnestness for a decision — whether the corporation is to rule the State, or the State the corporation. Corporations have been multiplying with an accelerated rapidity and invading and appropriating every field of industry. Their promoters have purchased, by bribery and corruption, exclusive privileges from the temporary tenants of legislative power, and judicial casuistry has made these privileges irrepealable and endowed them with immortality. They have found means to combine all the corporations engaged in producing particular commodities so as to engross those commodities, suppress all competition therein, crush out and destroy all rival producers; and, aided by the Chinese Wall of a protective tariff, excluding the world's competition, they have thus been enabled to dictate to the American people what they shall pay for them, without submitting, as other people have to do, to the inconvenience of having the price regulated by the natural law of supply and demand. At every step in this baleful progress they have had the aid of the only branch of our national government which is non-elective, which is in no practical sense responsible to the people or to anyone for its acts, and which is totally out of touch with the people in its sympathies — the Federal judiciary. Individual members of that judiciary have struggled for popular right, but they have been overborne by the general current. The progress of usurpation has been as steady in one direction as the operation of that mechanical contrivance called the ratchet, or as the march of a glacier, or the southward movement of the great and wonderful Russian nation to execute the will

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of Peter. Jurisdiction has been seized on casuistic pretenses; the right of trial by jury has been set aside in vast reaches of country; the courts have gone into the business of the common carrier; the by-laws of corporations have overtopped in the judicial estimation the legislation of States which were once called sovereign; and constitutional ordinances, earned on the field of battle and intended as charters of human liberty, have been turned into the shield of incorporated monopoly. The barons of corporate power, outrivaling in wealth and splendor the merchant kings of Venice, have purchased of venal legislators seats in the Senate of the United States, and have found no difficulty in placing their allies on the judicial bench. Throughout all this the press — that *ægis* of a free people — has been directly or indirectly subsidized into silence. Or where it would speak, it has not been able to speak, because the bar, who alone can instruct the press in legal matters, pursuing their courtier-like habits, have not dared to raise their voices in public opposition to the work of the judges in whose courts they must earn their daily bread. Meanwhile the masses of the people — scattered, isolated, ignorant, helpless; unable from their situation to combine and meet combination with combination; ground between the upper and nether millstone; groping about in the dark to find out who has hit them; with few save the shyster, the blatherskite, and the fraud to speak for them — have either expended their force in a blind and unreasoning hatred of all corporations, or in the invention of wild and idiotic schemes of relief through the assistance of the Government. To such an extent have these acts of usurpation and oppression fanned into flame the popular hatred of certain kinds of corporations, that no corporation can go before a jury in a contest with a natural person with any hope of justice; and in more than one jurisdiction, out of all the cases that have been freely submitted to juries to find the facts, careful estimates will show that the railroad corporation defendant has not been able to defend successfully one case in one hundred.

THE CORPORATION.

And yet we must have corporations. Like the poor, they are always with us, and always will be. That industrial development which has amazed the nations and made our country the prodigy of history could never have been attained without them. The two essential principles which they involve of a limited liability and a power in each member freely to transfer his holdings to any stranger, are absolutely essential to the carrying out of large enterprises. A single appalling instance within recent memory will serve to illustrate their beneficial effect. The Glasgow Bank failed, with a great liability. It was an unlimited joint-stock company, and the members were liable for its debts as partners. For many years the price of its stock had been greatly in excess of its par value, and furnished a favorite investment for trust estates. Its sudden failure reduced unnumbered widows and orphans to poverty, and ruined many a solvent man who held its shares in no other character than that of a trustee of an estate under a deed or will.

When we balance the benefits of corporations against their evils; when we perceive their absolute necessity in the development of the industrial life of a great people; when we contemplate the progress which has been achieved

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through this form of industrial combination, it does not become us, the members of the greatest, the most conservative and the most powerful of the learned professions, to drift into this blind and unreasoning prejudice against them. Nor can we repress the smile of a philosopher when we read vehement denunciations of corporations in newspapers which are themselves incorporated—recalling the classic example of Seneca inveighing against usury, with millions loaned out at interest. But we intend to rule them, and we do not intend to be ruled by them.

THE DARTMOUTH COLLEGE DECISION ANALYZED.

The Dartmouth College decision put the private corporation above the Legislatures of States which were at that time called "sovereign." If we can dismiss from our mental vision the superstitious glamor which attends great names, we shall have no difficulty in concluding that that celebrated decision proceeded upon grounds which will not bear any analysis. It was a writ of error to the Superior Court of New Hampshire. It was essential to the jurisdiction of the Supreme Court of the United States that a Federal question should be involved in the case. That Federal question was supposed to arise from the fact that the Legislature of New Hampshire had passed an act in violation of that provision of the Federal constitution which declares that "no State shall pass any bill of attainder nor any *ex post facto* law, nor any law impairing the obligation of contracts." * The King of England, acting through John Wentworth, the colonial Governor of New Hampshire, or Governor John Wentworth, acting as the King of England, had granted to Dr. Wheelock and his associates a charter incorporating them as an educational institution to be known as the Trustees of Dartmouth College, with certain powers and privileges, such as it was usual to confer on educational corporations. It was not stated in the charter that it was an agreement; it was not stated that the corporators gave anything to the King or to Governor Wentworth for it; and the fact was that they gave nothing for it. Nor did the charter say that it was a contract; nor did it contain any provision that the Parliament should not revoke it. Indeed, neither the King nor Governor Wentworth could have inserted in it such a provision, because neither could bind the Parliament of England. The Legislature of New Hampshire, after the Revolution (whatever its powers may have been before) succeeded, within the State of New Hampshire, to all the powers which had been hitherto possessed by the Parliament of Great Britain, except in so far as restrained by the constitution of New Hampshire and the constitution of the United States. That Legislature undertook, by the passage of successive acts, to modify the charter of the corporation of Dartmouth College in certain particulars which it is not necessary to name. This led to the existence of two alleged corporations, each claiming to be the rightful corporation, and as such entitled to the properties of the corporation. In an action of trover for the books of the original corporation, brought by the new corporation, the Superior Court of New Hampshire decided in favor of the plaintiff, thereby sustaining the recent acts of the Legislature of New Hampshire, both under the con-

* Const. U. S., Art. 1, § 10.

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stitution of New Hampshire and under the constitution of the United States. To reverse this decision a writ of error was sued out in the Supreme Court of the United States under the twenty-fifth section of the Federal Judiciary Act. It was necessary, to support the jurisdiction of the Federal Supreme Court, for it to hold that the acts of the Legislature of New Hampshire were either bills of attainder or *ex post facto* laws, or laws impairing the obligation of a contract. That they were not bills of attainder could not of course be argued. Although Chief Justice Marshall had been so wild, in the previous case of *Fletcher v. Peck*,* as to argue that an act of the Legislature of a State repealing a previous legislative grant was in the nature of an *ex post facto* law — showing either his lack of technical learning or the looseness of his judicial conceptions — yet in this case Webster had too much respect for his reputation as a lawyer to take such a position, and Marshall did not repeat that dictum.†

The question was then narrowed down to the question whether the Legislature of New Hampshire had impaired the obligation of a contract. If it had not, there was no Federal question in the case, the Supreme Court of the United States had no jurisdiction, and there was nothing to do but to dismiss the writ of error. It is to be perceived that the crucial question for decision was whether the charter of a corporation, although not *purchased*, as ancient charters often were, was a *contract;* secondly, whether, if a contract, it was a contract within the meaning of the clause of the constitution of the United States above quoted; thirdly, whether, if a contract, any *obligation* remained with reference to it on the part of either of the contracting parties; and finally, whether, if such an obligation remained, it had been impaired by the acts of the Legislature of New Hampshire in question. The Supreme Court of the United States (only one judge‡ dissenting) decided all these questions in the affirmative; and the deliberate judgment of many lawyers of our day is that it decided every one of them erroneously. Hon. John F. Dillon, in a written expression that I cannot now put my finger upon, said that one needs to read again the opinion of the great Chief Justice to reassure himself upon this question. I submit that a sound lawyer cannot reassure himself by reading that opinion.

In the first place, the charter of the college was no contract at all. Some ~~benevolent noblemen and gentlemen~~ had subscribed to a fund to enlarge the school of Dr. Wheelock from a school for the instruction of Indian youth into a school for the instruction of English-speaking youth; and the King, moved merely by considerations relating to the welfare of his subjects, as *parens patriæ*, out of his own special grace and mere motion, as the charter recites, and not for anything which the corporators gave to him or agreed to do, granted to them the charter. The reasons on which this was held to be a contract—

*6 Cranch, 87.

†Though Marshall was certainly not a learned lawyer, at least at the date of the decision of Fletcher v. Peck (*Anno*, 1810), yet it would be unjust to impute to ignorance his argument founded on that clause of the constitution, since the expression *ex post facto* was at an early day applied to civil and criminal laws alike. (Co. Litt. 241; Fearn. Rem. 175; 2 Ld. Raym. 1352; 1 Ham. Bla. Com. 132, note.)

‡Mr. Justice Duvall.

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on which question the jurisdiction of the court depended — were slurred over by the Chief Justice in a few sentences, the substance of which was that this was a *grant*, and that a grant, according to Blackstone, differed in nothing from a contract. He did not stop to analyze this dictum of Blackstone. He did not want to do it, for that would have defeated the jurisdiction of which he was evidently so greedy.*

A *grant*, in its usual acceptation, is merely a *gift*, under seal, of land or of incorporeal hereditaments. It is a gift of something which cannot pass and be executed by delivery, and which must therefore pass by the execution and delivery of a deed.† It may or may not be a contract. If it has been *purchased* — if a *consideration* has passed for it, if something is agreed to be done for it, it is a contract. If not, it is no contract.‡ Must I attempt to prove this to a body of lawyers? If a beggar meets you in the street and solicits of you a nickel, and you give him the nickel, that is not a contract; it is merely an executed gift. So, if, by a deed of gift, you make an advancement to your son, that is no contract. A gift is no contract, whether of chattels executed by delivery, or of land or incorporeal hereditaments executed by the delivery of a deed; an advancement is no contract; a devise is no contract. You have a law school in your State University at Lawrence; but your professors do not teach the students that an executed gift, oral or written, is a contract. You have courts of justice in Topeka; but no lawyer argues therein that a gift is a contract. But it was necessary to the enormous seizure of jurisdiction made by the Supreme Court of the United States in the Dartmouth College case, for the court to hold that a gift in the form of a grant under seal is a contract, and they did not hesitate to decide it, though without giving any lawyer-like reasons for their decision.

But the second proposition which they encountered presented even a greater difficulty. The constitution of the United States did not say that no State should impair the *effect* of contracts, or divest *rights* vested through contracts: those safeguards of property rights were left to the State constitutions; it said that no State should impair the *obligation* of contracts. Now what is the obligation of a contract? It is merely the *duty* which either of the contracting parties has assumed towards the other for the consideration named. This duty exists only so long as the contract remains *executory*. When the contract is performed on either side the obligation of the contract assumed by that contracting party is discharged and is at an end. The Federal constitution intended that when a man, by a contract, has agreed to pay money or do a certain thing, and has not paid that money or done that thing, the Legislature of the State shall not step in and say that he shall be exonerated from paying that money or doing that thing. That was what it meant, and that was all it meant. That is all that

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*Mr. Justice Washington was so careless of his reputation as a lawyer that he boldly argued that a *gift* is a contract. (4 Wheat. 656.)

†2 Black. Com. 317; And. Dict. Law, verb *Grant*.

‡ "A *gift* being nothing more than a transfer of property without consideration." Mr. Justice Davis in Kehr v. Smith, 20 Wall. 35.

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can be gathered from the meaning of the words employed, and that is all that can be discovered by the language as interpreted by writers in the *Federalist*. It was aimed at preventing the States from passing laws which they were so frequently passing to relieve the distresses produced by the Revolution: stay-laws, laws discharging contracts, retroactive statutes of limitation, and laws repealing all remedies for the collection of debts.

But Marshall did not hesitate over such a trifling difficulty of interpretation. His mind, fertile in casuistry, discovered an obligation even in an executed contract. Nay, more; it discovered the obligation of a contract in an executed gift. That obligation was the *implied* obligation not to take back the gift. To recur to the example of the beggar on the street, when you comply with his supplication and give him the nickel, according to Marshall's theory you make a contract with him, which is that you will not knock him down and take the nickel away from him. That is the obligation of contract on which the Supreme Court of the United States assumed jurisdiction to reverse the decision of the Superior Court of New Hampshire, and to place the private corporation above the Legislature of a sovereign State.

Nor did the difficulty of degrading sovereign legislation to the plane of private contracts at all weigh upon the minds of the concurring judges. The court had decided nine years before that a legislative grant is a contract within the protection of the constitution of the United States.* They had at the same time decided *arguendo*, that such a grant could not be impeached for fraud, and they had decided on a supposed case in judgment that it could not be impeached for fraud as against a subsequent *bona fide* purchaser for value.† As they foresaw, their doctrine that an act of the Legislature making a grant cannot be impeached for fraud, from the very necessity of the case has come to be a settled maxim of American jurisprudence.‡ But every private contract can be impeached for fraud, both at law and in equity. By these decisions, then, the legislation of a sovereign State creating a grant of any species of private property rights is not only reduced to the level of a private contract, but is degraded below that level. Although obtained by bribing and corrupting the temporary tenants of legislative power, it is sanctified by the Federal constitution, and endowed with immortality. For the benefit of the corporation it is *not* sovereign legislation, but a mere contract vesting rights which cannot be recalled. For the benefit of the corporation it *is* sovereign legislation, and hence no contract in the sense of being impeachable for fraud.

But the infamy did not stop here. The court had already decided § that the doctrine extended to a legislative grant of exemption from taxation; that such a grant, unless voluntarily surrendered by the grantees or their successors, was

* Fletcher v. Peck, 6 Cranch, 87.

† Ibid.

‡ People v. Draper, 15 N. Y. 545; People v. Shepard, 36 id. 289; Baird v. Mayor, 96 N. Y. 581; People v. Albertson, 55 N. Y. 50; People v. New York Central R. Co., 24 N. Y. 498; Flint &c. R. Co. v. Woodhull, 25 Mich. 103.

§ New Jersey v. Wilson, 7 Cranch, 164.

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eternal, and this has come to be the settled doctrine of the court.* And yet this right of taxation is conceded by that court,† and by all other courts, to be the highest incident of sovereignty — to involve the very right of self-preservation on the part of the State. Nevertheless it was established by this and the preceding decisions that individuals could purchase by bribing the temporary agents of the people the right, for themselves and their successors, to exist forever as an artificial being,‡ and to enjoy forever exclusive privileges and franchises purchased in this way, although these privileges involved the surrender by the State of the highest right pertaining to sovereignty. Fraud and bribery were thus deified, armored in triple mail, and endowed with immortality. The incorporated rogues, escaping from State control, took refuge under the sheltering *ægis* of the Federal judiciary. Sovereign rights got by bribery from the temporary tenants of legislative power had passed from an outraged people beyond recall; fraud had become eternal, and the little finger of the corporation was stronger than the loins of the State.

Nor did the concurring judges in the Dartmouth College case stumble over any historical difficulty. Interpretation, as Sir William Blackstone and Dr. Lieber have so well pointed out,§ is a *faithful* effort to discover in the language of the instrument, and in other evidence, the real meaning of the author. Where the meaning of the instrument is doubtful, surrounding circumstances may be looked to for the purpose of discovering what its authors really intended. The slightest glance at the history of the adoption of the Federal constitution will show that the States in adopting it never intended to adopt it with the construction thus put upon it. This is shown by a single fact. The States, after adopting the constitution, proposed about fifty amendments to it. Of these, twelve, proposed to the States by Congress under the 5th article of the original instrument, were adopted by the concurrence of the legislatures of three-fourths of the States. The eleventh of these amendments ‖ withdrew from the Federal judiciary the jurisdiction which had been granted in the original instrument, of actions against a State. There is scarcely any room for doubt that in enacting this amendment the States intended to withdraw from

* Humphreys v. Pegues, 16 Wall. 244; St. Anne's Asylum v. New Orleans, 105 U. S. 362; Poindexter v. Greenhow, 114 U. S. 270.

† McCullogh v. Maryland, 4 Wheat. 431; Loan Asso. v. Topeka, 20 Wall. 663.

‡ Marshall's definition of a corporation in the Dartmouth College case was that "it is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important are *immortality*, and, if the expression may be allowed, individuality; properties by which a perpetual succession of many persons are considered as the same, and may act as a single individual."

§ "The fairest and most rational method to interpret the will of the legislator is by explaining *his intentions at the time when the law was made*, by signs the most natural and probable." (1 Bla. Com. 59. See also Lieber Herm. 23.)

‖ This amendment was separately proposed by the third Congress, September 5, 1794, and was declared ratified in a message from the President to Congress, dated January 8, 1798.)

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the Federal judiciary the whole subject of the obligations assumed by the States, whether by acts of their legislatures or otherwise. But by the judicial amendment to the constitution added by Marshall and his associates, that judiciary asserted a negative control in cases where all positive control had been denied them by the eleventh amendment. The contracts of a State could no longer be enforced by an action in a court of the United States; but if a State endeavored by a repealing act to recall its gratuitous grant, although obtained by the bribery of its legislature,* the Federal judiciary could block that, and thus exert by indirection a power which the eleventh amendment prohibited it from exerting directly.

Marshall himself admitted in the Dartmouth College case that the interpretation which he had put upon the constitution had not been in the minds of the authors of the instrument.† Mr. Justice Miller, in his lectures on Constitutional Law, says that it surprised the country.‡ Subsequent judges have adverted to the fact that such a construction had not entered the minds of the authors of the constitution.§ We may, in the light of the history of those times, conclude with confidence that the Federal compact could not have been formed if such an interpretation had been foreseen. The framers of that instrument did not mean what the concurring judges in the Dartmouth College case held it to mean, and they knew it. But they were as little troubled about what the authors of the constitution really meant as they were about their own jurisdiction to decide anything in the case. They were judicial doctrinaires, and were not endeavoring to discover what the authors of that instrument really meant, but were endeavoring to invent reasons for making it mean what they wanted to make it mean.

EFFECT OF THE DARTMOUTH COLLEGE DECISION.

Estimating the consequences of this celebrated decision, it must be conceded that some benefits flowed from it. Corporate investments were undoubtedly rendered more secure, at least in the public opinion, and particularly in the public opinion of Europe, whither we were looking for capital with which to develop our natural resources. Credit is a matter of opinion, and undoubtedly it gave credit to corporate investments. But it produced a train of evils of the most appalling character; or rather it aggravated certain existing evils to an appalling degree. It was followed by an orgy of political corruption and profligacy probably unparalleled in the history of our race. In those days all corporations, roughly speaking, in this country, were created by special acts of the Legislature. The lobbyists, manipulators and fixers, who had hitherto followed the industry of procuring from the State legislatures corporate franchises, awoke to the sudden discovery that the franchises which they were procuring were irrepealable. This enormously enhanced their value. They also discovered,

* Such was the case of Fletcher v. Peck, 6 Cranch, 87.

† 4 Wheat. 644.

‡ Miller Const. U. S. 557.

§ Edwards v. Kearzey, 96 U. S. 607, per Swayne, J.; Stone v. Mississippi, 101 U. S. 816, per Waite, C. J.

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what they had not dreamed of before, that in dickering with the members of the Legislature for the passage of bills creating corporations, they were making *contracts* with the State, and what was happier, contracts which could not be impeached for fraud. The procuring of such contracts developed into a vast and corrupting trade. Franchises were every day bought from venal legislatures by direct or indirect bribes, and resold at a profit. Legitimate and needed legislation was neglected. Legislative bodies in some States literally became the paid agents and tools of particular corporate institutions. Nor did the end of the orgy come until the people of the several States remodeled their constitutions so as to prohibit the passing of special laws granting or amending corporate charters, and providing for the formation of corporations under general laws.*

An Englishman named Watt had turned to mechanical purposes the expansive power of steam. His statue stands in Westminster Abbey, the greatest of England's great; greater than Wellington; greater than Nelson; greater than any general or statesman, or lawyer or divine; bearing the inscription that it was erected by a grateful king and country. That invention turned to such use the coal and iron which God had planted beneath the soil of England, as made that country the first among the nations, to remain the first until her glory shall be eclipsed by that of her unruly child —

> "That young eagle of the West,
> Driven out from the mother's nest
> To forage for herself alone."

An American named Fulton had applied this new and wonderful force to navigation. Another Englishman, named Stephenson, had applied it to land navigation, so to speak, by means of the railway. It was soon discovered that the railway train could be made to fly over the land at a far greater rate of speed than the ship through water. Then began the era of railway building, both in England and this country. The orgy which surrounded the halls of legislation extended to the temples of justice, and the judges were swept into the mælstrom. The good fame of the judiciary of the English-speaking countries, whether appointive or elective, in so far as mere *honesty* — the commonest quality of judges — is concerned, is amply justified by history and experience. Dealing with every question openly and in public view, under the full light that beats against the throne; surrounded by an upright and honorable bar,

* "It is an interesting chapter in the legal history of this country to consider how, after this decision was rendered, the State sought to, and did practically *avoid the worst effects of it*, by putting into statutes granting corporate privileges and powers, the condition that the charter should be subject to amendment, alteration or repeal, at the pleasure of the legislature." (Miller Const., § 559.) Mr. Justice Story, in his concurring opinion in the Dartmouth College case, was good enough to point out that this could be done. But King George the Third, when he granted the charter, evidently *did not know* that it would be necessary to insert such a clause, in order to keep the charter within the control of future Parliaments, else he would no doubt have done so! The Dartmouth College decision thus annexed to the charter the quality of being above the State, which quality the king himself had no power to confer upon it. In so far as it clothed this charter with an immunity with which it was not born that decision was in itself in the nature of an *ex post facto* law — according to Marshall's conception in Fletcher v. Peck — as against the people of New Hampshire.

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sensible of their dignity and proud of their traditions—a judge must be a poor specimen of human nature, indeed, that does not deserve the credit of acting from honest motives. But in a period when public opinion set in wildly in favor of corporate enterprises, the judges, especially of the elective courts, must have been more than human if they could have resisted entirely the force of the surrounding impulses. They drifted with the tide so far as to forget to be impartial. Their intellects were "hoodooed" when great corporations stalked into their courts in the persons of eminent counsel. Unconsciously they did most of their thinking on the side of the corporation.

CORPORATE FRAUDS ON THE PEOPLE SANCTIONED BY THE COURTS.

Railroad companies were organized and their runners were sent out through the country to obtain subscriptions to their stock. They were sharpers capable of such work, and they did not go out without being first well instructed by their superiors. They regarded the unsophisticated farmer as their legitimate prey. They promised him that the road would come to this or that place in his neighborhood, or that it would go within this or that distance of his farm. On these representations they urged him to help along an enterprise so beneficial to him, by taking some of its stock. He said: "Put it in writing in the subscription paper, and I will take so many shares." It was done; but the road was not so built, and when he endeavored to escape from his contract on the ground that the other contracting party had not complied with it on his part, he discovered that, instead of being defrauded by the cunning agent of the corporation, he himself had committed a fraud on the Commonwealth.* If the representation was not put in writing his position was still worse. It was a fraud upon him, but that was immaterial, for the agent of the corporation had no authority to tell the lie; therefore the corporation might take the benefit of the fraud, and he take his experience.† He had subscribed to a railroad which should go by a certain route, and they now purposed to build it on another route; but that was immaterial, since the agent, in telling him where the road was to be built, was expressing a matter of mere opinion, belief, or motive.‡ He was promised that he should not be called upon to pay his subscription until the road had been built to a certain place, and the road was never built to that place and never would be; but he must nevertheless pay, for parol evidence is not admissible to vary the terms of written contracts.§ In fact, he discovered, through a decision of the Supreme Court of his State, that he, and not the railroad company's agent, was the party that had committed the fraud; just as the honest man, assaulted by the highwayman, is frequently led off to jail by the courageous policeman, while the highwayman is permitted to escape. His experience was but a duplication of that which he had had with some insurance company, except that in this case the Supreme Court was the adjuster.

*2 Thomp. Corp. (in press), § 1309, *et seq.*

†Ibid., §§ 1311, 1395.

‡Ibid., § 1394.

§Ibid., § 1395.

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Such was the kind of justice frequently meted out to those who endeavored to escape from corporate clutches into which they had been drawn by fraud and deceit. For those who remained in the corporate ring there was a far different measure of justice. The Legislature had provided that the shares should be paid for in money; but the complaisant courts held that this was merely directory; that the legislature could not have been guilty of so foolish a thing as to require the subscriber to the corporate shares to pay his subscription in money, which money the corporation might use in purchasing of him certain property which it might need in its business; but that he might make a subscription payable in such property. The extension of this doctrine has led to consequences the most injurious to the public. It has led to the "stocking" of property at fictitious values; and the courts have sustained such manipulating under the specious reasoning that a valuation placed by the associates on the property transferred to the corporation is conclusive in the absence of fraud. The result has been that worthless mining property and patent rights have been "stocked" at enormous values; that the corporation has thus been enabled to publish that it has a certain great capital "fully paid up," and to obtain a false credit until the bubble bursts, leaving its creditors in the lurch. The progress of this debauching doctrine has been such that the highest American court — disregarding the express language of the governing State statutes, and refusing to follow the decisions of the courts of those States interpreting their own statutes — has sloughed off into the low conception that, as against its creditors, a corporation can sell its unissued shares at less than par, and even give them away, provided they are worthless at the time; an act the very doing of which will make and keep them worthless.*

POWER OF A CORPORATION.

Nor did the complacency of the courts stop here. Corporations were not only endowed with rights superior to those of sovereign States and of the people, but many of the courts clothed them with the wonderful faculty of being at the same time both debtor and creditor. Shares of the stock of a corporation are debts of the corporation, and in every bank statement its capital stock is classed among its debts. The obvious reason is that the money paid in by its shareholders must, on the final winding-up, be re-distributed to them, after its creditors are satisfied. But when the courts endowed them with the faculty of becoming the holders of their own shares, of owning their own debts, of selling such debts, and of trafficking in them generally, they merely endowed them with faculties which the legislature had forgotten to extend to them, and which did not belong to ordinary mortals.† Of course, I do not impute this complacent folly to all the courts; the weight of authority is no doubt the other way.

Among the irrepealable sovereign prerogatives which corporate promoters have been able to purchase by bribery is that of eminent domain. The State has the power to take private property for public use subject to the constitu-

* Clark v. Bever, 139 U. S. 96; Fogg v. Blair, id. 118; Handley v. Stutz, id. 417.

† See, for example, Iowa Lumber Co. v. Foster, 49 Iowa, 95; s. c., 31 Am. Rep. 140; Jones v. Morrison, 31 Minn. 140.

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tional limitation that it must be on the payment of just compensation. The language of nearly all these constitutional prohibitions is that "private property shall not be taken for public use without just compensation." But the framers of our early State constitutions forgot to say "or damaged." Now, while restraints upon legislative power are not to be extended by a loose construction, the direct *damaging* of private property for public use was obviously within the meaning of the provision. It was a taking *pro tanto*. But many of the courts did not so hold. The corporation was everything; the isolated individual was nothing, even in the opinions of elective judges. Easements of great value connected with his land were destroyed. The infamous doctrine of an English court, founded in the principle of their constitution that Parliament is supreme, that where the Parliament authorizes a public work and does not provide for the payment of damages to adjoining property injured by that work, no damages can be recovered by the property owner,* though totally inapplicable under our theory of government, was appealed to for the purpose of allowing the corporation to damnify the individual without limit and without compensation, in so far as its acts did not amount to a literal "taking" of the land. This infamous judicial abnegation of justice received, I am glad to say, one of its greatest checks in the Supreme Court of the United States, showing that that great tribunal has sometimes been on the side of popular right.† Doctrines so odious to justice could not be permanently endured by a free people possessing the means of changing their constitutions; and they changed them in most of the States, so as to put in them what the courts ought to have put in them by a fair judicial construction — the provision that private property should not be taken *or damaged* for public use without just compensation.‡

REPEAL OF THE DARTMOUTH COLLEGE DECISION.

But you ask me why I make a tirade against the Dartmouth College case and its congeners — against a decision the doctrine of which has been accepted throughout the United States as a canon of constitutional law — the principle of which has so irrevocably passed into American jurisprudence that no argument can hope either to shake or to repeal it. I answer that I am not asking the courts to reverse it; I am not asking the lawyers to repudiate it. I am merely dealing with it as a historical subject. Its doctrine remains a theoretical principle in our jurisprudence. Beyond that it is dead, dead, dead. It has been repealed by the slow, expensive, and laborious process of enacting statutes and amending constitutions. Mr. Justice Story, in his opinion in that case, was good enough to point out that the pernicious consequences of the decision which the court made could be avoided by retaining in acts of incorporation the right of amendment or repeal. Such a right has been incorporated either into the organic law or into the general statute law of probably every State in the Union. No corporation is now created except subject to the right of legislative super-

* British Cast Plate Manufacturers v. Meredith, 4 Term Rep. 794. See Northern Trans. Co. v. Chicago, 99 U. S. 642.

† Pumpelly v. Green Bay Nav. Co., 13 Wall. 181.

‡ See And. Dict. Law, verb *Take*.

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vision. I repeat that the Dartmouth College case has been everywhere repealed, so that it now exists only as an abstract principle of jurisprudence. It was repealed by silent and laborious processes. But it took a long reach of time and great labor, worry, and expense to undo its mischief.

"Facilis decensus Averni, sed revocare gradum, . . .
Hic labor, hoc opus est."

The fact that it has been repealed inspires our confidence in ourselves as a self-governing people. The people, after contemplating it with amazement for a time, seized upon the old gray keystone and pulled it down with scorn.

But this was not the first instance of the repeal of a doctrine issuing from a judicial throne. A more memorable instance was the repeal of the Dred Scott decision. That infamous judicial fulmination, which dehumanized man, was repealed amid the thunder of cannon. A million men sprang to arms to repeal it. The fire of God filled them. They advanced to the charge shouting the battle-cry of Freedom. And the earth shook, and the clouds vibrated to the Eternal Name.

THE NEW CHARTER OF LIBERTY, THE FOURTEENTH AMENDMENT.

On the very points of their bayonets they thrust into the constitution a new charter of liberty, the fourteenth amendment. In doing that they supposed that they were merely providing a safeguard for the newly-emancipated slave, and for the rights of the scattered Union men of the South against hostile and tyrannical majorities. They did not suppose that they were erecting another Federal barrier around corporate oppression and power. But, as was suggested in the argument of a distinguished lawyer before the Supreme Court of the United States, "they builded wiser than they knew."* Indeed they did. The sunset of life may have given to the eminent authors of that instrument a mystical lore. To some of them

"The wall
That sunders ghosts and shadow-casting men"

may have become as crystal, so that they could see through it, and so that they could hear spirit voices behind the wall and learn their elemental secrets, powers, and forces.† They ought, then, easily to have foreseen that a court which had already declared that a corporation was a "citizen" would find no difficulty in declaring that it was a "person."

But what if it did? The new charter of liberty declared that no State should deprive any *person* of life, liberty or property without due process of law, or deny to any person within its jurisdiction the equal protection of the laws. What if judicial interpretation should apply this prohibition to the protection to those artificial persons called corporations? Surely no corporation ought to be deprived of life, liberty or property without due process of law, nor ought it to be denied the equal protection of the laws. But that was not the point. There was nothing new in this amendment, except that it turned a pro-

*Mr. Roscoe Conkling, in his celebrated speech in the San Mateo Tax cases.

†Tennyson: Merlin and Vivien.

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vision which had always existed in Magna Charta, and which was to be found in some form of expression or other in the constitution of every State of the Union, into a Federal prohibition against the several States. It had come down to them in Magna Charta in the form of the celebrated declaration that "No man shall be taken and imprisoned, or deprived of his freehold, his liberties, or his privileges, or exiled or outlawed, or otherwise destroyed, but by the judgment of his peers and the law of the land." Judicial interpretation had always understood the words "law of the land" to have the same meaning as the words "due process of law."* But surely the new amendment did not intend to make that due process of law which had never been due process of law before.

From time immemorial the Parliament of Great Britain had exercised the power of regulating the rates of charges of persons and corporations engaged in employments which affected the public interest. I shall not offer, before a body of lawyers, a single instance to prove that this had always been a legislative, and never a judicial question, except when made a judicial question by statute. In the Granger cases, decided in 1876, the Supreme Court of the United States declared that it was a legislative question, and that it was not the purpose of the framers of the fourteenth amendment to abridge the legislative power of the States in this regard, which had come down to them by inheritance from the English Parliament. Fourteen years later the same court decided, on a writ of error to the Supreme Court of Minnesota, that it was not a legislative, but a judicial question; that a State could not limit the charges of a public carrier except by a judicial proceeding in which the carrier had notice and an opportunity to be heard. The complaining railroad company *had* notice and a full opportunity to be heard; but this did not prevent the seizure of jurisdiction made by the Supreme Court of the United States. The Supreme Court of Minnesota, in upholding the power of the railroad commission to limit the charges of the complaining railroad company, had, in its opinion, used language incompatible with the theory which was now to be promulgated for the first time, that the question was a judicial instead of a legislative question. And because of this mere reasoning in the opinion of the Supreme Court of Minnesota, the Supreme Court of the United States, usurping a jurisdiction where no right under the constitution of the United States had been violated, according to the facts as stated in the opinion of the court itself, proceeded to reverse the judgment of the Supreme Court of Minnesota.† It was thus guilty of a bald and indefensible seizure of jurisdiction in the particular case.

But it had already been accustomed to the making of judicial fulminations in cases in which it had no jurisdiction. It had confessed, in the celebrated case of Marbury against Madison,‡ that it had no jurisdiction to issue its mandamus against the Secretary of State, and yet it proceeded to deliver a long fulmination upon constitutional principles. The spectacle was as indecent as

*2 Inst. 50.

†Chicago &c. R. Co. v. Minnesota, 134 U. S. 418 (reversing s. c. 38 Minn. 281.)

‡1 Cranch, 137.

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the spectacle would have been if Mr. Jefferson, then President, had undertaken to decide a cause depending in the Supreme Court of the United States, or had issued his proclamation announcing his opinion as to how the cause ought to be decided. The court had also, in 1810, entertained a case concocted in Massachusetts with reference to certain lands lying on the Mississippi river, for the purpose of declaring for the first time that the provision in the constitution of the United States that no State should pass any law impairing the obligation of contracts extended to those contracts which consisted of grants made by an act of the Legislature of the State itself. Mr. Justice Johnson, at the close of his opinion, states in substance that he had regarded it as a feigned case, concocted to draw the opinion of the court, and that it ought to be repelled as such, but that he had yielded his conclusion out of deference to the character of the counsel concerned.* Outside of this, the case has the earmarks of a case concocted for the mere purpose of drawing the opinion of the court on a constitutional question. Although it was a writ of error to the Circuit Court of the United States, there was first a preliminary opinion by Marshall on the pleadings, and then — a proceeding unheard of in appellate courts in cases at law — the counsel were allowed to amend the pleadings in the Supreme Court; and when they had fixed them up *by consent*, and had amended them in the appellate court, so that it no longer remained possible for the appellate court to pass upon the case which had been adjudged in the court below, the court proceeded to deal with the new case before it, and pretended to affirm a judgment of the court below which had never been rendered, upon the new case as it stood in the Supreme Court. Such being the traditions of the court, there was no difficulty in its insulting the Supreme Court of a State by reversing its judgment upon a Federal question, where, by the concession of the opinion of the Federal Supreme Court, no Federal right had been violated.

But, you ask me, what is the drift of this argument? What is the real objection to the Dartmouth College decision? No State ought to recall its own grant, duly and properly made. No State ought to deny to an incorporated body of men the equal protection of its laws. No State ought to deprive them of life, liberty or property without due process of law. I grant all this. Every lawyer grants it. Every citizen grants it. No one denies it. But that is not the question. The question is, whether the superintendence of corporations shall be taken from the State judicatories, by successive usurpations of jurisdiction, and vested entirely, or substantially, in the Federal judicatories. In using the word usurpation I intend to speak guardedly, and not to use an exaggerated expression.

The decision of the Supreme Court of the United States in the Minnesota

* His language was: "I have been very unwilling to proceed to the decision of this cause at all. It appears to me to bear strong evidence, upon the face of it, of being a mere feigned case. It is our duty to decide on the rights, but not on the speculations of parties. My confidence, however, in the respectable gentlemen who have been engaged for the parties, has induced me to abandon my scruples, in the belief that they would never consent to impose a mere feigned case upon this court."

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Milk case, in which it declared that the regulation of the charges of public carriers is a judicial and not a legislative question, is most potent. The meaning is that it is a *Federal judicial question.* In the state of the superintending jurisdiction possessed by the Supreme Court over the highest State courts of judicature, under the judiciary act, and in the face of this enormous and indefensible extension of Federal jurisdiction, it can be in the most important cases little else than a *Federal* judicial question; and the whole question thus passes out of the hands of the people, where it was immemorially held by our ancestors, into the hands of a judiciary not responsible to them.

I now intend to point out a more flagrant usurpation than any of which I have hitherto spoken. The constitution of the United States* provides that the judicial power of the United States shall extend to controversies between citizens of different States. The judiciary act contains a similar expression.† Whatever meaning may properly be ascribed to the word "person," it had never been supposed that the word "citizen" could include a corporation. The word had never been so employed in any act of Parliament or other act of legislation; nor in any legal treatise; nor in any argument addressed to a court of justice; nor in any law glossary or dictionary. For fifty years the Supreme Court of the United States had held that it did not mean a corporation.‡ When a corporation sued or was sued it held itself under an obligation to look behind the artificial body into the persons who actually composed it, for a corporation is but an aggregation of men—and to see to it that all the members of a plaintiff corporation were citizens of a different State from the defendant, and that all the members of a defendant corporation were citizens of a different State from the plaintiff. But, as was stated by Mr. Russell, in his admirable address last year before the American Bar Association, when the first railroad corporation made its appearance in court the court reversed this principle and declared that a corporation was a citizen. It seems to have lost its intellect in the presence of a railroad company, and its first violation of this rule of obvious propriety, made in the year 1844, is found in one of its weakest and most inconclusive opinions.§ It required but one or two steps in the progress of usurpation for it to hold that when a corporation is created by or under the laws of a particular State it is, for the purposes of Federal jurisdiction, to be *conclusively presumed* to be a citizen of that State.‖ The consequences of this usurpation have been threefold: 1. The first consequence was pointed out by Mr. Russell

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*Art. 3, sec. 1.

†The expression is: "Between a citizen of the State where it is brought and a citizen of another State." (See Rev. Stat. U. S., § 629, clause 1.)

‡Bank of U. S. v. Deveraux, 5 Cranch, 61; Hope Ins. Co. v. Boardman, id. 57; Breithaupt v. Bank of Ga., 1 Pet. 238; Commercial &c. Bank v. Slocomb, 14 Pet. 60.

§Louisville &c. R. Co. v. Letson, 2 How. 497.

‖Railway Co. v. Whitton, 13 Wall. 283; Muller v. Dows, 94 U. S. 444; Steamship Co. v. Tugman, 106 U. S. 118; Kansas Pacific R. Co. v. Atchison &c. R. Co., 112 U. S. 414. It is worthy of note that the court which declared a *corporation* a "citizen" for purposes of Federal jurisdiction, had already declared that a *free negro* was not. (Dred Scott v. Sanford, 19 How. 393.)

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in the address to which I have alluded. Such a mass of cases in which corporations were parties was drawn into the Circuit Courts of the United States, that the re-examination of them on appeal or error literally swamped the Supreme Court of the United States, so that it gradually fell behind its docket to the extent of four years; and it resulted that an appeal or writ of error to that court was practically a denial of justice. This usurpation, and this alone, made necessary the creation of the new circuit courts of appeal. 2. A far more serious consequence was that it defrauded the State judicatories of a large jurisdiction which rightfully belonged to them.* It defrauded them of their rightful jurisdiction over many controversies between citizens of their own States.

THE "TRAMP CORPORATION."

Corporations may migrate; and according to the doctrine of the Supreme Federal tribunal no State can repel from its borders a foreign corporation engaged in commerce.† Under this infamous usurpation of jurisdiction it has come to this: that citizens of Kansas can organize in New Jersey, or in West Virginia, or in some other State, what is known as a "*tramp corporation*" to do business wholly within the State of Kansas; and yet when this tramp corporation is sued in a court of the State of Kansas by a citizen of Kansas, if the amount in controversy exceeds $2,000 the cause is removable to a Federal court.‡ What is worse than this, a single citizen of Kansas, with two or three dummy shareholders, each nominally owning one share but really owning none, himself in point of fact the sole shareholder, can organize a tramp corporation in another State for the purpose of doing business in Kansas, and in this way can defeat your State courts of their jurisdiction and litigate every matter above $2,000 with citizens of Kansas in the Federal courts. This is no imaginative picture. The country swarms with corporations having but one real shareholder. I am personally acquainted with some of them. The jurisdiction of the State courts is every day defeated, under the intolerable fiction which I have already named, by persons who have thus become incorporated. Some citizens of New York recently

* So tenacious is the Supreme Court of the United States of this usurped jurisdiction, that a State statute compelling this artificial "citizen" of another State to litigate only in the State courts, and not to remove suits to the Federal courts, is unconstitutional and void. (Home Ins. Co. v. Morse, 20 Wall. 445; Barron v. Burnside, 121 U. S. 186.)

† Pembina &c. Co. v. Pennsylvania, 125 U. S. 181. See also New Orleans &c. Packet Co. v. James, 32 Fed. Rep. 21.

‡ As to "tramp corporations," see 25 Am. Law Rev. 352. A characteristic example of a "tramp" railroad corporation is furnished by the case of the "Southern Pacific Company," thus described by Mr. Justice Harlan in a recent case: "The Southern Pacific Company is a corporation of Kentucky. But it has no property or business in that State, nor any officer or agent there except an assistant clerk, holding a subordinate position, and maintained for the purpose of preserving the charter of the company under the laws of that Commonwealth. The company has a large amount of property in California, and is operating lines of railroad in this district. Its general offices are, and for many years have been, in San Francisco, where its principal executive officers reside. The bill alleges that the Southern Pacific Railroad Company [a California corporation] claims to have transferred to this company all its property, real, personal, and mixed." (United States v. Southern Pacific R. Co., 24 Chi. Leg. News, 201.)

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organized one of these "tramp corporations" in the State of West Virginia to do business wholly within the State of New York. They incurred a liability in the State of New York founded in tort, and were sued as partners, on the theory that what they had done was a fraud upon the corporation laws of New York. But the Court of Appeals of New York held that it was a good corporation under the laws of New York, and within the State of New York, and that the co-adventurers were not liable as partners.* Under the decisions of the Supreme Court of the United States this corporation was conclusively presumed to be a citizen of West Virginia. If engaged in "commerce," it could not be kept out of the State of New York by the laws of that State, or by the people of that State. If sued by a citizen of that State, in a court of that State, for more than $2,000, the cause was removable to the Circuit Court of the United States.

THE GROWTH OF USURPED FEDERAL JUDICIAL POWER.

I say, speaking to an audience of lawyers, mindful of their conservative tendencies and traditions, mindful of their respect for the decisions of the courts, which respect I do not wish to abate, that the decisions of the Supreme Federal tribunal which created this jurisdiction were an *unfaithful interpretation* of the constitution and of the Judiciary Act; that the judges of the court who concurred in that interpretation *knew* that such was not the meaning of those instruments intended by their framers; that they did not intend, in placing that interpretation upon those instruments, to carry out the fundamental canon of interpretation, which is faithfully to ascertain the meaning of the author of the instrument and to give effect to that meaning; but that they consciously intended to seize upon a jurisdiction which they did not rightfully possess. Men are greedy of power; judges are but men; and one of the most pitiable illustrations of this trait of human nature is that courts are greedy of jurisdiction. And when you have a court which is supreme in every sense of that word; above which there is no superintending tribunal; you have a tribunal which, in obedience to this trait of human character, forever proceeds in one direction by one seizure after another of jurisdiction, so that it threatens ultimately the results predicted by Mr. Jefferson, of absorbing to itself all the powers of government. Power unopposed continually accumulates, and power which is the conclusive judge of its own power continually advances its own aggrandizement. Why need it give just and sensible reasons when there is no power to oppose?

> "What need we fear who knows it,
> When none can call our power to account?"

THE "TRUST."

The *trust* — by which name I of course mean those trusts for the control of corporations which have been formed within the past few years by the process of the stockholders of various corporations assigning all their shares to a committee to be held in trust and voted by them at their several corporate elections — has been defeated to such an extent in several of the State courts of last re-

* Demarest v. Flack, 128 N. Y. 205.

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sort, that it is now passing out of existence and reappearing in the form of the "*tramp corporation.*" The New York Sugar Trust, having been dissolved by a decision of the Court of Appeals of New York, has reappeared as a corporation under the laws of New Jersey. Another very extensive trust appears as a corporation under the laws of West Virginia, although its principal place of business is Pittsburgh, in the State of Pennsylvania. As I have already suggested, the aim of these organizations is to engross all the commodities of a particular manufacture and to dictate the prices of that commodity to consumers, at their own mere will and pleasure. The extent of the power of the States over this new enemy depends upon what the Supreme Court of the United States shall allow the States to do through their State legislation. That legislation must be submitted to the revision of the superintending bench of appointive lawyers at Washington; and there is no other rule of revision which can be stated by a lawyer, or to lawyers, except that judicial process of *inclusion and exclusion** which amounts to mere discretion. Theoretically, all the police power in the American Union is possessed by the States; the General Government possesses none of it. Practically, this police power cannot be exercised in any case wherein the Supreme Court of the United States shall be of opinion that its exercise brings it in conflict with the commerce clause of the Federal constitution, or with the fourteenth amendment to that constitution. The police power is admitted to be the vaguest and least defined of all governmental powers; and, on the other hand, the words "due process of law" are capable of almost any judicial expansion. In view of these facts, is it not time to pause and inquire whether we have not reached the danger-line, and whether, in fact, we are really a self-governing people? The scattered and segregated States can oppose but a feeble resistance to a judicial body which is forever at work, which is responsible in no sense to the people, and which is the conclusive judge of its own powers.

THE REMEDY.

They must cease their attempts at regulating corporations by their own State legislation, and must renew those attempts in the halls of national legislation. The first step will be to get rid of a Senate which at present is but little better than a collection of the lawyers and the agents of corporations. They should be unseated and expelled, as the money-changers were driven out of the temple. A Senate elected by the people must be substituted in their stead, and this is sure to happen in the near future. But two or three more decisive steps in judicial usurpation will lead to the election of the Federal judiciary. It will require but a few more Original Package decisions and Minnesota Milk decisions to bring about that result. In the meantime the people must change the channel of their action. It is obvious that State legislation can no longer cope with great corporations. It is further obvious that great corporations, such as a railroad company carrying on its business in different States, ought not to be subjected to different rules in different State jurisdictions, but ought to be governed by uniform laws and rules prescribed by the General Govern-

* Davidson v. New Orleans, 96 U. S. 105, per Miller, J.

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ment. Precious as is the principle of local self-government, we must confine it to merely local matters. We have outgrown the tribal theory. If the men that made the Federal constitution could have foreseen the steamboat, the railroad, the telegraph and the telephone, they would not have left as much power in the hands of the States, and they would have placed more power in the hands of the General Government. The General Government ought to have plenary power over the subject of commerce—not merely interstate commerce, but over the whole subject of commerce. This should include the capacity to give us a general commercial code, and to regulate corporations in the interests of the people by uniform laws.

THE GROWTH OF CORPORATIONS.

Statutes exist in several States under which corporations may be formed for any lawful purpose. In some States nearly every kind of business is being incorporated. This is the case in Missouri, and I for a long time bought my meat of a retail butcher who was in fact a corporation, and whose capital did not amount to $500. All kinds of business are rapidly assuming the form of corporate organization. Furthermore, the large corporations are steadily eating up the small ones. Large corporations have found, with the aid of astute lawyers, the means of becoming the *owners* of small corporations. Wealthy railroad companies have built new railroads in various Western States, under new corporate names and corporate organizations, but in fact *owned* by the older companies. The smaller proprietor or manufacturer, incorporated or unincorporated, is crushed out by the competition of the larger corporate rival, and is obliged to sell out to it and receive as its compensation a few shares of its capital stock. He thus surrenders his business to corporate managers. The evil which I foresee will be twofold: 1. All tangible property in the State, real and personal, will be owned by corporations; none of it will be directly owned by individuals. Such of the people as have means to invest will have them invested solely in the shares of corporations. They will thus submit the entire management of their properties to the managers of great corporations. Every householder will be, even in respect of his homestead, the tenant of a corporation. 2. All the producers, with few exceptions, will become mere wage-workers, holding their right to labor, and therefore their right to live, as tenants-at-will of corporations, and consequently of corporate managers. The corporate manager will thus wield a double power: a power over the stockholder, which experience proves to be practically uncontrollable, and hence exclusive; and secondly, the power of life and death over the wage-worker. All business enterprises, all material exertion, all physical labor, will thus sink under the control of the capable few who manage the corporations. Out of the hundreds of millions into which our race will expand, a few will be proprietors and managers; the great mass will be wage-workers and vassals. The prospect in store for our children is

"A blindfold bondage where their hire is blows."

THE IMMORALITY OF CORPORATIONS.

This corporate life has within it an essential immorality. That immorality

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consists in the fact that the recognition of an artificial being which alone is *legally responsible*, destroys all sense of moral responsibility on the part of the managers. A pious stockholder that would not think of transacting his own private business on Sunday, consents that the business of the corporation should run every day in the year. He would not oppress his own employés; but the drivers and conductors of the street railroad in which he is a director work eighteen hours a day, Sunday included. In this and other like cases he deludes his conscience into the belief that it is the corporation, and not he, that is committing the sin. He demands certain results of the managers, and then shuts his eyes and stops his ears. He does not know, and does not want to know, the means by which they achieve these results.

The dishonesty into which they are encouraged by the stockholders, they in turn employ against the stockholders themselves. The result is that our corporate life is honeycombed with corruption. A corporation is formed; its business is put into the hands of certain managers holding some of its stock, and expert in the management of its business. Debts are created, and the managers become the creditors. The result is that rings are organized within rings, wheels within wheels, combinations within combinations. The managers, in the character of creditors, seize upon and foreclose the property of the corporation, and, by well-known processes, squeeze the other stockholders out and become themselves proprietors, with larger holdings than they had before. This sweating process, dignified by the name of foreclosing and reorganizing, has come to be a regular industry in our courts of justice. In this regard, the chancellor and the rogue are running a continual race together. No sooner does the chancellor invent some means to circumvent the rogue, than the rogue invents some new device to outwit the chancellor. Courts of justice have neither the time nor the means to take upon themselves the management of all the corporations in the country; and therefore the outraged and complaining stockholders are told that they cannot come into court until they have exhausted all the remedies within the corporation. They ask for bread, and they receive a stone.

"FREEDOM OF CONTRACT."

In regard of its relations with the wage-worker, the corporation steadily claims the right to be treated as on a par with the wage-worker in the making and taking of contracts, and the courts of justice generally concede to the corporation that right. The Legislature of Massachusetts recently passed an act designed to curtail a species of sweating which the mill-owners of that State had adopted against their female operatives, and the Supreme Judicial Court of that State held it void as abridging the freedom of contracts.* The legislatures of two States enacted laws prohibiting corporations from paying their labor in what are called "store orders," thereby swindling them out of a portion of their wages by compelling them to trade at the company's store where they were obliged to pay enormously excessive prices, instead of being left free to trade where they could buy the cheapest. These statutes were in like manner held

*Com. v. Perry, 45 Alb. L. J. 27.

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unconstitutional, as abridging the freedom of making contracts;* although the Supreme Court of Indiana, to its credit be it said, has held otherwise.† What mockery to talk about the freedom of contract where only *one* of the contracting parties is free! What mockery to talk about the freedom of contract as between the corporation which has everything and a day laborer who has nothing! The astute judges who so declared, moreover, forgot how much their arguments prove. Those arguments would abolish the usury laws of every State in the Union which has such laws, except possibly in the few instances where those laws are authorized by constitutional ordinances. It cannot be affirmed with any degree of success that the State has no power through its Legislature to interfere with merely private contracts. A learned lawyer, in an address before the American Bar Association at its last session, pointed out numerous instances where such interferences have been upheld.‡ The most noted, perhaps, is in regard of the contract between insurance companies and persons seeking insurance, either fire or life. Here the contracting parties are on an absolute equality. Insurance is not a necessity. The insurance companies are numerous, and are engaged in the sharpest competition with each other. It requires the hardest solicitation in many cases to induce persons to insure. And yet the State Legislatures universally regulate such contracts, and in several instances have undertaken to prescribe their terms; and the constitutionality of these statutes has been upheld.§ The insured is often a business man — a substantial citizen; he has some money, and is therefore respectable; and hence the courts uphold acts of the Legislature abridging the freedom of contracts between him and the insurance company, for his benefit. But the wage-earner has nothing to eat, and the corporation has everything. It is the corporation that is respectable, and the starving wage-earner that is the nuisance — the thing to be avoided; the thing to receive charity at the end of a pole. Laws cannot be passed for his protection, providing that certain oppressive contracts shall not be made with him.

THE RIGHT OF THE STATE TO ARBITRATE BETWEEN THE MAN WHO IS DOWN AND THE MAN WHO IS ON TOP.

I conclude by repeating before this audience a solemn protest which I have elsewhere ‖ made against the doctrine of the economists who proceed upon the view that labor, like any other commodity, is subject merely to the law of supply and demand. I grant that such is the general and often the inexorable law;

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* Godcharles v. Weegeman, 113 Pa. St. 431; State v. Coal &c. Co., 33 W. Va. 188; State v. Goodwell, 33 W. Va. 179. See, for decisions on like theories, *Ex parte* Kubach, 85 Cal. 274; Millett v. People, 117 Ill. 294.

† Hancock v. Yaden (Ind.), 23 N. E. Rep. 253.

‡ Frederick N. Judson, Esq., of St. Louis. See 25 Am. Law Rev. 885, *et seq.*, for the portion of the address referred to.

§ By State courts: Riley v. Franklin Ins. Co., 43 Wis. 449; Queen Ins. Co. v. Leslie (Ohio), 24 N. E. Rep. 1072. In the Supreme Court of the United States, but in reference to a *foreign* insurance company: Equitable Life Ins. Co. v. Clements, 140 U. S. 226.

‖ Referring to an address delivered before the Illinois State Bar Association in January, 1891.

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but I protest that it is within the power of human institutions to mitigate its rigor. I say again, that if human government has any just office to perform, it is to arbitrate between the man who has everything and the man who has nothing; between the man who is up and the man who is down; between the man who is on top and the man who is beneath.

The owner of a horse has an interest that it shall be well fed, warmly housed, and kept in good condition. The late slave-owner had the same motive in respect of his human chattel, and this motive operated as a protection to the chattel. But the corporate manager has no such motive. He is as insensible to the sufferings of the wage-earner as the Emperor Vespasian was to the sufferings of the five thousand slaves that died in building the Coliseum. Other slaves, captured in war, were crowding in from the frontiers to take their places. So the worn-out wage-worker of the corporation who falls by the wayside finds his place immediately filled by the hungry pauper that crowds forward from some human breeding-ground. Those who in turn crowd forward, begging the poor privilege of being the slaves of the corporation, of being its tenants-at-will of the mere right to live — what shall we say of them? They constitute the "darkest England" of our population; the "submerged tenth"; the "disinherited"; the "outcast"; the "lost."* That "darkest England" exists in Missouri, and it exists in Kansas. Shall not the State do something for them? — for the children that the trades-union will not even allow to learn a trade whereby they may live?

The cry of the laboring man, and the worse cry of the man that cannot even find labor wherewith to live, have touched the heart of a man who sits upon a spiritual throne. Whatever we may think of the claim of the Roman Pontiff to be regarded as the Vicar of Christ on earth, or of the creeds which he promulgates, or of his pretensions to the rank of a temporal sovereign — we must allow that he is a man of the deepest piety and of the tenderest benevolence — filled with the very spirit of Christ; and we may say of him as Mr. Gladstone said, that his person is very near our hearts. He has promulgated an encyclical letter upon the subject of the wrongs done to the laboring man, which continues to echo and re-echo around the world. In that letter he has said: "Let it be granted, then, as a rule, that workman and employer should make free engagements, and in particular should fully agree as to wages. Nevertheless, there is a dictate of nature, more imperious and more ancient than any bargain between man and man, that the remuneration must be enough to support the wage-earner in reasonable and frugal comfort." And he adds by way of explanation — "sufficient to enable him to maintain himself, his wife and his children." Quoting these words in a recent address, Archbishop Ireland — no truer American living than he — adds: "In reckoning the minimum wage, the laborer's *family* must be considered. Man has from his Creator the right to be a husband and a father, and build up a home. Without new

*These striking expressions from the recent book of William Booth, "Darkest England," are quoted from a speech delivered by Archbishop Ireland, of Minnesota, at St. Louis, during the recent jubilee of Archbishop Kenrick.

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safeguards to the homes of the laborers of the land, there can be no public virtue, no social strength, no living, strong, hopeful nation. Perhaps one of the most fatal results of unrestrained industrial greed is that it either makes the family impossible, or despoils it of its sacredness and bloom."* Surely the dignity of manhood is not to be thrown into the economic scale with the beasts of burden, or with inert chattels, and left there. Surely the State has some higher office to perform than the mere keeping of the peace among its citizens. Surely the State can find some way, without too much repressing human liberty, to see to it that every man who is able and willing to work shall get enough to support a family and a home in frugal economy. I admit the magnitude of the problem; I do not countenance visionary crusades; but the evil is not so overwhelming as to be without remedy. I pray you to find it.

SUPREME COURT RECORDS.

BY W. A. JOHNSTON.

The judicial system and procedure of Kansas have been characterized from the beginning by simplicity and directness. More than thirty years ago our judicial organization was devised, and perhaps the greatest eulogy that can be pronounced upon it is that it has remained practically unchanged ever since. It was evidently the aim of the framers of the plan to provide a system of courts that would be accessible to all, and which would furnish an easy, prompt and inexpensive mode of administering justice. There is nothing cumbrous or complex in the structure or machinery of the courts. We have one court of general jurisdiction, which is available to everyone, whether he is able to give security for costs or not, and one appellate tribunal, to which practically all questions determined in the *nisi prius* courts may be taken and reviewed; and it was the manifest purpose of those who originated the system that an easy and quick passage between the courts should be furnished. The same disposition is evident in the enactment of the code, wherein empty ancient forms and the technical and prolix pleadings of bygone days have been put aside, and in their place we are given a procedure that is plain, easy and practical. All the old common-law forms of action are abolished, and in their stead there is provided a single and simple form of action, in which a party may tell the story of his complaint or defense in few and familiar words. Carrying out the idea, the partition which so long divided law and equity has been removed. Equity, however, has not been abolished, but it is the basis of our laws, and its principles are available to every suitor in every action. And so we see that the aim has

* Quoted from the speech just alluded to. This noble speech is correctly printed in the *Western Watchman* (St. Louis) for Dec. 6, 1891.

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been to simplify and popularize the law and its administration, and bring them closer to the people and within the comprehension of all. There is nothing of an aristocratic nature in the system. No court-dress or insignia of office is worn in any of the tribunals of the State. The wig and the gown, as well as all other artificial means of adding dignity and impressiveness to the courts, have been discarded. The people of Kansas have indicated that they are willing to trust themselves in the selection of judges, and have recognized the principle of popular sovereignty by providing for the election of judges at stated intervals, for comparatively brief terms. No restrictions have been placed on this choice. Any citizen of the State, without regard to condition, color, education, or training, is eligible to be chosen to the highest judicial offices in the State. It was a matter of surprise to many when they learned that county attorneys had been elected in Kansas who were not educated to the law, and had not been admitted to the bar. They were doubtless more surprised upon learning that judges of the district court, who were not trained in the law nor admitted to its practice, were not only eligible to election, but actually had been elected. The constitutional and statutory qualifications for justices of the peace and judges of the District and Supreme Courts are the same. One of the anomalies of our system is that while a justice of the peace is eligible to be elected as a justice of the Supreme Court, a judge of the District Court is not eligible to be chosen for that high office during the term for which he was elected district judge. Although no special education or training in law is absolutely required, it is a pleasing and a notable fact that, with very rare exceptions, the judges of the District and Supreme Courts have been men of learning in the law, sound judgment, and incorruptible integrity, who have in full measure enjoyed the confidence and respect of the profession and the people. All of these qualifications are essential to a proper and just administration of the law, and the fact that the people have generally decided that only such persons as possess those qualifications should be placed upon the bench, is a strong argument in favor of an elective judiciary, and that the people may be safely intrusted with the choice of these important officers. There are many who say that it would be the part of wisdom to provide against emergencies by prescribing a rule that only those who have received an education in the science of the law, and have shown to the satisfaction of some appropriate tribunal their fitness to practice it, should be elevated to the bench. But the discriminating intelligence of the people reduces the danger of the absence of such a provision to the minimum. In the words of Disraeli, one of England's prime ministers,

> "The people, sir, are not always right;
> The people, Mr. Gray, are not often wrong."

A recent Legislature made provision for expediting the business of the Supreme Court through the appointment of a commission "to assist the court in the performance of its duties in the disposition of the numerous cases pending in said court." In the act creating the commission it was deemed prudent to prescribe the qualifications of those who might be appointed. Whether it was with a view of elevating the standard of the bench, or whatever may have been the motive of the Legislature, it provided that the Governor should appoint

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persons "of high character for legal learning and personal worth." It is enough to say that the Governor has added to his creditable record and reputation by closely following this legislative injunction in the appointments that he has made for commissioners.

In making this addition to the Supreme Court, we observe the reluctance of the people to change the judicial system of the State by multiplying tribunals or interfering with the simplicity, directness and dispatch of the original plan, where there is but one court of first instance and one appellate tribunal.

The procedure in the Supreme Court is marked by the same characteristics as that in the district court. The original design was that cases on appeal and on error should be speedily determined, and at a trifling expense. In appeals from convictions in criminal cases, the code provides that indictments or informations shall not be set aside for informal defects, or the omission of technical terms that were formerly regarded as important, nor for any defects or imperfections which do not tend to the prejudice of the substantial rights of the defendant on the merits; and the court is enjoined to "give judgment without regard to technical errors or defects, or to exceptions which do not affect the substantial rights of the parties." A further provision is made, that "An appeal shall not be dismissed for any informality or defect in the taking thereof."

With respect to civil cases sought to be reviewed on error, the rule is substantially the same. The court has frequently declared that errors which are immaterial and could not have prejudiced the substantial rights of the party complaining, will be disregarded. Purely technical objections and harmless errors find no favor in either the code or the court. It is also evident from the provisions made for the exercise of appellate jurisdiction, that the framers of the code intended that the ascent to the Supreme Court should be easy and quick. As there can be no trial *de novo* in the Supreme Court, and as the review of either a civil or criminal proceeding is based upon the record alone, and as nothing can be noticed or considered by the court unless revealed by the record, that document becomes a very important one in appellate procedure. Under our practice we have two varieties of record — a transcript, and what is commonly termed a "case-made"; but criminal cases, as we all know, can only be reviewed upon a transcript. From the organization of the State until 1870, the record in the Supreme Court was a transcript of that of the District Court, or a copy of the proceedings preserved in the District Court. The originals remained in the court below, and only duly-authenticated transcripts or copies were taken to the Supreme Court. In 1870, the Legislature provided that civil causes might be reviewed on an original case prepared for the Supreme Court. In the early history of the State, and until 1871, most of the civil cases that reached the Supreme Court were brought up on transcripts, but since that time the new, or reformed, appellate procedure has been largely in vogue, until it may be safely said that 95 per cent. of all the civil cases brought to the Supreme Court are presented upon a case-made. It is familiar law to the profession that a transcript, to be reviewable, must contain a full, verbatim copy of everything which by statute is a part of the record, and of every step or proceeding taken during the course of the trial which is brought upon the record through a bill of

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exceptions. It must, in short, be a full and complete copy of the whole record; and the tendency in Kansas is to place upon, and make a part of the record, as much of the proceedings as possible. So the statute provides that it shall consist of "the petition, the process, return, the pleadings subsequent thereto, reports, verdicts, orders, judgments, and all material acts and proceedings of the court." The language of the statute is sufficiently broad to include written motions and instructions in civil cases when reduced to writing and signed by the judge; but affidavits, depositions, and other evidence introduced on the trial, as well as instructions in criminal cases, and those in civil cases not signed and filed as required by the code, form no part of the record of the District Court, and can only be preserved and made a part thereof by a bill of exceptions. As the statute now stands, no criminal case can be considered on appeal in the Supreme Court except upon a transcript; and it cannot be reviewed at all unless the record embraces the indictment or information, the warrant and the return thereon, motions to quash or for continuance, if any, together with the entries disposing of the same, bills of exceptions containing portions or all of the evidence and proceedings, if any, the verdict of the jury, the motion for a new trial, and the motion in arrest of judgment, together with the orders of the court overruling the same, and the sentence and final judgment of the court. All of these, if a part of the record, must be transcribed and properly certified and authenticated, and brought up to the Supreme Court at great expense and considerable delay, although the only point relied upon by the appellant to reverse the judgment is the admission of a single sentence of testimony. Why should the record of the Supreme Court be so needlessly incumbered, and the appellant required to bear the burden of bringing up all these irrelevant and useless documents, where the only question submitted on the appeal is the misconduct of a juror, the history and proof of which might be contained in a few pages of manuscript? Of what use are the motions for a continuance, the evidence, the charge of the court, the verdict of the jury, and numerous other proceedings, entries and orders, when the only point for determination is whether the facts stated in the information constitute a public offense? Why should a full record of all that had transpired in a case be necessary, where the only question assigned is an alleged inconsistency between the verdict and the judgment of the court? In short, why should a party be required to bring up any more of the record than is necessary to fairly present and illustrate the error assigned for reversal? There is no reason beyond an arbitrary requirement of the statute; and if a short and simple section were enacted, providing that transcripts in cases of appeal, or error in civil cases, should not contain any redundant or useless matter, nor any part of the record except that which is necessary to explain the points presented for decision, it would be a long step in the right direction, and would tend to lessen the records, reduce the costs, and shorten the delay of proceedings in the Supreme Court.

In some cases the bills of exceptions which are prepared and allowed are needlessly incumbered with proceedings in the court which are already a part of the record, and also with prolix and unnecessary statements and repetitions, the omission of which would be greatly in the interest of the party who is

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finally compelled to pay the costs. A brief and explicit statement of what is proved or offered to be proved is better practice in most cases than a recital of the evidence *in extenso*. Of course an abbreviated statement cannot always be employed, and whether and when it can necessarily depends on the point of law intended to be raised by the appellant.

There is a great want of uniformity in the manner of authenticating the transcripts brought to the Supreme Court, and the hopes of many an appellant have been laid low by defects in the certificates made by the clerks. No more is required than for the clerk to certify that "the foregoing is a true and complete transcript of the record" of the case. It is not uncommon for a clerk to specifically enumerate the papers and proceedings contained in the transcript, and to certify that they are true copies of the originals on file in his office, without stating that they are all of the record. In the absence of such a statement, and where the face of the transcript discloses that it does not contain the complete record of the case, the appeal or cause must be dismissed.

The fact that a transcript is necessarily bulky and expensive, and the further fact that bills of exceptions are inconveniently obtained, no doubt suggested the great departure which was made when the case, or "case-made," as it is termed, was devised. Following the idea which pervades the entire system, it was intended to simplify and cheapen the cost of litigation in the Supreme Court. In a case decided not long ago it was said: "There are two methods of bringing a civil case up for review: one upon a case-made, and the other upon a transcript. In no other way can the appellate jurisdiction of the court to review such cases be invoked or exercised. The case-made may be very brief, much more so than a transcript, and the first named was devised mainly for the purpose of abridging the record and lessening the expense of review. All that it needs to contain is a brief statement of the issues in the case, and so much of the evidence or proceedings as is necessary to a full understanding of the errors assigned. . . . When the other method of bringing up a case for review is employed, the plaintiff in error cannot shorten the record at his option. The authenticated transcript attached to the petition in error must be a copy of the whole record. It must be a transcript of all that is legally a part of the record in the court below; and what the record shall consist of is pointed out in the code. It is a cumbrous and expensive method, but the rule is rigid that when that means of review is employed, the transcript must contain the whole record."

The court added, in closing the opinion, that "We are not disposed to discourage brevity in the making of records for review, as it is a much-needed reform. It may be accomplished by means of the case-made. But when a review is based on a transcript, it must contain the complete record."

The case-made is an anomaly in appellate practice. It is fashioned after no model, and is novel and unique in both design and manner of preparation. Those who fashioned it evidently intended to simplify the methods and reduce the expense of review to the last degree possible. They purposed that the points should be raised upon an abbreviated and intelligent statement, from which should be excluded all formal recitals and irrelevant papers and records. Instead of providing that it shall be settled and allowed during the term, as is

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required in the case of a bill of exceptions, provision is made that the time may be extended for making the case until after the hurry of the term is over, and until such time as may be convenient for both court and counsel. Although it was the purpose that the case, when complete, should be exceedingly brief, yet to further minimize the expense the Legislature provided that the original case should be taken from the files of the District Court and brought up to the Supreme Court, thus avoiding even the expense of a copy or transcript. The statute introducing the practice was so short and so plain that the profession congratulated themselves that thereafter cases could be reviewed without danger of failure on account of non-compliance with intricate and uncertain rules. It reads:

"A party desiring to have any judgment or order of the District Court, or a judge thereof, reversed by the Supreme Court, may make a case, containing a statement of so much of the proceedings and evidence, or other matters in the action, as may be necessary to present the errors complained of to the Supreme Court."

And the provisions pointing out how it should be prepared, settled and signed are equally brief and explicit. The architect of that short and simple-looking enactment little knew what a field of discussion and decision it would open up; and the great number of decisions that have been made illustrate both the imperfection of our language and the ingenuity of our bar. The new method was hailed as a great reform of procedure, which would dispense with bulky records and burdensome cost-bills. It was thought that the case was so easily made and authenticated that there would be little room for interpretation and refining by the court; and the general opinion was that the subtle and astute practitioner could lay no traps for the inexperienced and the unwary. The popular notion was that the author of this plan had made "the way easy and the path straight" to the Supreme Court, and a lawyer who had been informed that the principal object of this new feature was to condense and shorten the record, concluded to put the plan in practical operation; so he came up complaining of the refusal of instructions which had been asked, and, to avoid expense, omitted from his case all portions of the charge of the court about the correctness of which there was no question, and, when the decision of the court was announced, he was gravely informed that as the record had not been enlarged so as to embrace all of the instructions, the court could not say that there was error in the refusal of the one asked. Another counsel, who for the sake of economy omitted the pleadings from the case which he had made and presented, was surprised to learn from the decision that the absence of the pleadings defeated a review of the very point he desired to have considered. Another, who sought a review of the alleged erroneous admission of testimony, abbreviated the record by including only a statement of the issues, the testimony alleged to have been wrongfully admitted, an exception, and the final judgment, was shocked to learn that the want of the motion for a new trial, which he had left out to save expense, precluded an examination of his point. Still another, who understood that a short, succinct statement of evidence served the same purpose as a full recital of all that was stated by the witnesses, and who brought up what he called a "substantial synopsis" of the evidence, was greatly dis-

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couraged upon receiving notice that the court had decided that what he brought up was not substance, but shadow, and that the sufficiency of the evidence in his case could not be reviewed. We can imagine how discouraging it must have been to another, when the court determined that it could not reach the merits of his case, because, in authenticating the record, the clerk of the District Court had failed to place the word "attest" before his signature; and to attach his seal. This ruling may have started an inquiry in the mind of his client as to whether the rules of law were invented to promote or prevent injustice, and as to how soon the time would come when courts would brush away mere technical objections and put aside the straight-jacket with which the law was invested by our ancestors, and go directly to the merits and justice of a controversy.

The result of these and some similar rulings seems to have led many to think that this route to the Supreme Court, instead of being plain and pleasant, was full of perils and pit-falls, and that the only safety lay in preserving and taking up all the pleadings and proceedings from the initiation of the action down to the final judgment, including a full statement of every step taken and every syllable of evidence offered. The dangers, however, were more imaginary than real; and while, perhaps, the language of the court in some instances with reference to what was necessary in a record may have been inaccurate, and, possibly, misleading, it is evident that the steady aim of the court from the start has been to encourage brevity and economy in making cases, and to make the rules of practice as simple and certain as possible. To this end it has been repeatedly held that a short statement of the issues will, in most cases, be sufficient, and thus dispense with full copies of formal and prolix pleadings; and the decisions also indicate that the cases are very rare indeed where more than the substance of the testimony given on the trial is necessary for a review. Of course, if the sufficiency of a pleading is challenged by a demurrer, and the ruling thereon is complained of, a copy of the pleading would be proper; but to copy the demurrer at length is wholly unnecessary. In such a case, a brief statement of the grounds of demurrer is all that is required. Where questions are raised as to the admission or rejection of testimony, the giving or refusal of instructions, or as to whether the findings and verdict are within the issues, there is no necessity for including in the record anything more of what has been pleaded than a succinct statement of the issues. When the complaint is that the whole scope of the charge given to the jury is unwarranted and erroneous, then, possibly, all of it should be embraced in the record; but where the error alleged is the giving or refusal of a certain instruction, the inclusion of the whole of those given and refused is useless and unjustifiable. If error is assigned upon the refusal of an instruction, all that is necessary is to state the issues, that evidence was offered tending to prove the issues, or to establish a certain fact or facts, and that no instruction like that refused was given by the court; and perhaps it might be well to state that the reason for the refusal was that it did not correctly state the law in a certain particular. If it is claimed that an instruction given was not warranted by the testimony, then, instead of bringing into the record all of the instructions and all of the testi-

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mony, it would be sufficient to set out the one complained of, and to state that it was not modified by other portions of the charge; and further, that the only testimony upon the subject of the instruction was as follows—stating briefly its substance. The records are more frequently extended and unnecessarily incumbered by copying the testimony as recited by the witnesses, giving questions and answers, together with frequent and sometimes frivolous objections, than from any other cause. It is seldom that such a recital of all the testimony is useful or necessary to present the errors of which complaint is made. If the objection is to the form of the question, or the order of introducing testimony, the verbatim recital of a portion may be important; but in respect to the usual questions raised upon testimony, no such necessity exists. Even in cases where the complaint is that the evidence is insufficient to sustain the finding, verdict, or decision, it is seldom necessary to preserve the entire evidence. In most cases it is claimed that the evidence is wanting as to some fact which is deemed material, and where it would be readily conceded that as to all other necessary facts the testimony was sufficient. In such a case it is a waste of ink, paper, and labor to write into the record the evidence about the sufficiency of which there is no dispute. Why not confine it to a statement that there was evidence tending to sustain the finding, verdict, or decision, as to all essential facts except as to tender, demand, or notice, or whatever the fact may be which the plaintiff in error claims has not been proven, and then state the substance of all the testimony offered, if any, to establish such fact? It has certainly become apparent, too, by this time, that it is needless to ask a review of the testimony where there is any substantial conflict in it. The rule that the Supreme Court is not a trier of the facts, and will not disturb a finding or verdict where there is a substantial conflict in the evidence, has been more frequently announced than any other, and a study of the cases shows how large a part of the time and labor of counsel and court is uselessly expended in cases where the result is inevitable.

The examples which I have referred to are only illustrative of a great many others that could be mentioned, where the bulk of the case might be greatly diminished. I will not undertake within the limits of this paper to treat of the technical rules relating to the time of making and serving cases, as the repeated decisions of the court leave little to be said with respect to them. It may be proper to add that in making up a case where copies of the pleadings and other papers are necessary, which is very infrequent, the title and signing or verification of each, as well as the indorsements thereon, might be profitably excluded, except in cases where some question is raised with respect to these. Judge Sawyer, of California, in admonishing the bar of that State as to incorporating in the record useless repetitions and irrelevant statements, said that—

"All matter that does not tend in some degree to illustrate the point litigated is an incumbrance, and positively injurious. Many pages are often taken up with verifications of papers, acknowledgments of deeds, titles of the case, repeated in every paper of the record, . . . where no point is made on them; in such case . . . it would answer all the purposes if in the place of the verification, acknowledgment, title, etc., the words 'duly verified,' 'duly acknowledged,' 'title of the cause,' etc., and the date of the document or filing were substituted."

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He further said that—

"Each time the style of the court and title of the cause are repeated one-half of a printed page is taken up, and the indorsement, title, names, etc., on each paper take another half-page. Where papers are short and numerous such repetitions are frequent, and they constitute a very large portion of a transcript. All this is unnecessary."

Like admonitions may be found in our reports, and yet it is a fact that the records in civil cases are much more voluminous than in the early history of the case-made. The growth of the records is about in the same proportion as the growth of the term by which they are known. At first it was called a "case," but now it has developed into the hyphenated expression "case-made," and a very able and somewhat critical member of the Association insists that the enlargement of the name is the work of the court, and not of the Legislature, and he still asserts that the use of the compound word is unjustifiable. Possibly there are some who think that the enlargement of the records is also to some extent due to the action of the court. That they have grown inordinately must be conceded. Not one-half of the civil cases now come up on a condensed record. They usually embrace pages and pages of matter which, if omitted, would greatly diminish the expense of review and greatly facilitate the work of the court. A case examined within the last decade contained about six hundred pages of record, and yet the only material question in the case was with reference to a demand, which was raised on the evidence and an instruction. In the case were lengthy pleadings, including all the indorsements of counsel and the district clerk, motions to make more definite and certain, with the order overruling the same, motion for continuance and affidavits sustaining it, and the order granting one, the summons and return, copies of subpœnas and return, the evidence written out at length, with questions and answers, and the name of the counsel interrogating was repeated with each question; the notice to take depositions was included; and, still more, there was embraced the printed rules for taking depositions, which appear on the blank notice prepared by Geo. W. Crane, not even neglecting that enterprising gentleman's advertisement: then followed all of the charge and the instructions refused, all of the special findings, including those asked and not given, the verdict, the motion for a new trial, with the affidavit supporting it, concluding with the final order overruling the motion and giving final judgment. The clerk's copy of this record, which is a type of many, cost about $300, and yet the point in the case could have been clearly and intelligently presented upon a record of ten pages, a copy of which would not have cost to exceed $5. In such a case, where the court below, without fault of the defendant, inadvertently commits an error, which requires a reversal of the judgment, the defendant is adjudged to pay all the costs, including the $295 for the clerk's copy of irrelevant matter that should never have been brought up. It is a standing reproach upon our system that there may be such abuse and waste under the forms of law, and the practice should be discountenanced and discontinued. There are many cases brought to the Supreme Court where the records contain more than a thousand pages of closely-written matter; and in one case which I recall there were about four thousand pages of testimony, the proper reading of which would take two weeks of time. Some

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of these enormous records are half-filled with valueless matter, which sheds no light on the question in issue, but only tends to extinguish the light of the eyes of those who are compelled to read them. Much of the delay in the Supreme Court is due to this cause. A great deal of time is needlessly given by the court in trying to extract out of such records the real questions of the case; and there are so many of them that the court is deluged, and walking, as it were, knee-deep through irrelevant and superfluous matter. The transcribing of the same adds great cost to the litigants, it is read by the judges at great cost to the State, and there is a biennial appeal to the Legislature for additional pigeon-holes and shelves to preserve that which is worse than useless. It is well that the State House is being enlarged, because, if our present practice continues, a great deal more room will be needed.

The employment of stenographers, who have done so much to expedite the business of the District Court, has tended greatly to swell the records of the Supreme Court. They stand ready to make up a case at ten cents per folio, and generally it is neatly done and properly arranged. It is a great temptation to the busy lawyer, when he finishes a trial and is hurrying from the court-room, to look over his shoulder, at the door, and order the stenographer to make up a complete case for him; and he may rest assured that nothing will be omitted. It is a sort of a nickel-in-the-slot practice, by which he puts in his money and obtains a copy of all the proceedings, everything from "A to Izzard," regardless of the errors which may be finally relied on.

It is said that the Spartans imposed heavy fines on anyone who used three words where two were sufficient. The enforcement of such a rule here would, I fear, bring financial ruin to some of the Kansas lawyers, and it is not certain that the judges of the Supreme Court, who write its opinions, would escape bankruptcy.

Some of the judges of the District Court have endeavored to correct the abuse at the time of settling cases, and the action of one of which I have heard is highly commendable. When an attorney brought to him a voluminous bundle of papers, and asked to have it settled as a case-made, the judge inquired what points he desired to present, and was told that there were only two, when the judge suggested that everything essential to a review of those could be stated in a few words, and calling his stenographer, he dictated a record of half a dozen pages which fully explained the grounds assigned as error; and when that record reached the Supreme Court it was doubtless regarded as "a thing of beauty and a joy," as compared with some of the stuffed records which are there filed.

Another case, involving exceedingly important questions, was brought up on a record of three pages, and affords an excellent illustration of how a record should be prepared. Judge Valentine, who wrote the opinion, and who never bestows praise except where it is due, thought proper to remark that "this case has been brought to this court upon a 'case-made' which is a model of brevity and clearness, and reflects great credit on the able counsel who prepared it." It is probable that he might justly have added that it also reflects great credit upon the judge of the District Court who encourages such a practice. A reform

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in reducing the records and correcting the abuses of the case-made cannot be accomplished, however, by the district judge alone, but will require the coöperation of the lawyers of the State; and with this coöperation compulsory remedies will hardly be necessary. I have more hope of success since this Association has undertaken the task of correcting the abuse. It is easy to advocate change and expose errors, but not always easy to suggest remedies. Some have suggested that the Supreme Court should make a rule requiring the plaintiff in error to prepare and serve with his case-made a specification of the errors on which he intends to rely, and then that the district judge in settling the case shall not permit anything to be included except what is necessary to present the errors complained of. Then there are others who, while favoring the plan, doubt the power of the court to make such a rule. But if no such power exists in the court, the same end could be accomplished by legislative enactment.

Another remedy suggested is to require an abstract of all records to be made and printed, stating the proceedings in chronological order, and omitting formal parts and everything except what is necessary to show the ruling of the court to which exceptions are taken, the abstract to be served upon opposite counsel, and if he thinks the abstract is imperfect or unfair, he can suggest the corrections within a stated time. Printed abstracts and records are required in Iowa, Missouri, and other States, and it is said the plan finds favor with the bench and bar. I have no doubt of the power of this court to make such a rule, requiring printed abstracts, but probably it will hesitate to make such an innovation unless it is made evident that the bar of the State would approve of such a course. To require parties to print and pay for a record, or an abstract of the same, would doubtless tend to diminish the size of records, and it would certainly tend to facilitate the examination and decision of cases by the court.

The delay can be partially overcome through counsel's argument at the hearing of the case, in assisting the court to winnow out all but the real questions in litigation. In large records, where the essential points of the case are hidden in a mass of irrelevant material, oral argument becomes very important. I regard it to be exceedingly valuable in nearly all cases, and I do not wonder that oral arguments are becoming more frequent. The late Chief Justice Ryan, of Wisconsin, well said that "the problems of justice can rarely be safely solved in solitary study. Forensic conflict gives security to the judgment of the law." Counsel can, while making an oral argument, greatly lighten the work of the Supreme Court by pointing out in a few words the controlling questions, and thus enable the court to concentrate its attention on these to the exclusion of the unimportant and irrelevant matters that may be included in a record.

It has also been suggested that the party who brings a record unnecessarily voluminous should be made to bear the unnecessary expense, regardless of the result of the review; and they go further, and would adopt the heroic treatment of imposing a money penalty upon all who bring up a frivolous appeal or who violate the spirit and purpose of the code by incorporating more than is necessary to explain the points submitted for decision. A conviction is taking hold of the profession and the people that there must be such an adjustment of rules and methods as will lessen the delay and diminish the cost of a review in the

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Supreme Court. The reform must be effected, and the administration of the law in this respect lifted above the contempt of the people; and I do not doubt that this Association will find and apply a suitable remedy. The discussion of the subject alone will go far toward correcting the abuses which exist, and will bring into practice that economy, simplicity, and dispatch which are the main characteristics of our judicial system. It is a cheerful and encouraging fact that the lawyers of Kansas, while conservative, are not skeptical of reform, but are patriotic and progressive, ever ready to promote advanced and correct methods of procedure; and I have no doubt but that they will devise a plan by which a review in the appellate court may be obtained more easily, more promptly, and with much less expense.

SUPREME COURT RECORDS AND REPORTS.

BY J. D. MCCLEVERTY.

Mr. President, and Gentlemen of the Bar Association: The bar is proverbially conservative, and slow to accept or urge changes in established methods. In the preparation of records for review by the Supreme Court, practically the old common-law bill of exceptions still prevails, though under our code of procedure the "case-made"—a mere device for an extension of time for its preparation—exists. In this is set out, generally, the pleadings in full, sometimes the process served, the journal entries of proceedings had in the lower court, and all of the evidence, even including the age and occupation of the witness, and a vast amount of the useless matter often accidentally dropped by witnesses or counsel during the taking of the evidence, much of which is of no value or weight in the determination of the case, and which of course might profitably be omitted. To omit it, however, is to afford the opposing counsel opportunity to urge that all of the evidence has not been presented, which, if accepted by the court, prevents a decision upon the merits. All this mass of useless matter must be read and examined by the judges, which of course entails a great waste of time and labor. It is not strange, in this condition of our practice, together with the small amount of labor now required of the lawyer to prepare his record, having a court stenographer to do the work, that our Supreme Court should be overwhelmed with business, even assisted as it is by an able and laborious Supreme Court commission.

If this record could be trimmed down so as to contain only a statement of the substantial merits of a case, much time and labor would be saved to be more profitably devoted to the consideration of the questions involved. Not only this, but a great saving in costs would be made. In many of the States, notably Iowa for many years, and more recently Missouri, a great and substantial improvement has been effected in requiring the parties to prepare and print an

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abstract of the record, and especially of the evidence, which, except where counsel disagree, which seldom happens, alone is considered by the reviewing court. The substance of this procedure is that the plaintiff in error, or appellant, prepares a statement and abstract of the pleadings, court entries, and evidence, so far as may be necessary to present the substantial merits of the case. To this the opposing counsel may suggest amendments, or, if the parties cannot agree, prepare another abstract. These are printed and filed, and where the parties seriously disagree the court may order the entire record printed and assess the cost of it against the one who failed or refused to prepare or agree upon a fair abstract. The result seems to be that usually the parties agree. In this abstract most of the evidence can be set out in comparatively few words in narrative form, except that when particular items of evidence may be challenged the particular questions and answers may be set out in full. This obviously greatly abridges the record, and naturally saves a vast amount of the time and labor of the court, while fully protecting the rights of the parties.

To accomplish such a change, of course statutory authority would be necessary, but the experience of other States where it has been the practice for many years, to the satisfaction of bench and bar, should be an ample guaranty that it is no longer experimental or dangerous. If this should justify serious consideration, I would also suggest, though with much doubt and hesitation, a few more additional changes in the same line. If an abstract of a case is alone to be considered, would it not be advisable to permit the parties the privilege at least, of preparing an abstract only of the evidence; and where they fail to agree upon an abstract, then reserve the right to either party to require a complete transcript of the evidence to be prepared, applying the same rule of assessing the cost of it to the party in fault. It would seem as though the parties could as well agree to an abstract in this way and thus save the cost of transcribing all, or most of it. If this abstract should be prepared immediately after the trial, as is now done with the "case-made," the opposing counsel in most instances could state the substance of the testimony of each witness from memory, which really would work, not only a saving of costs, but also of time. This could at least be done in all cases where the dispute does not arise upon the facts, but the law. In all cases to be certified by the trial court as showing the substantial case.

It would sometimes happen that this could not be done in justice to the particular case, but the determination as to who should bear the costs of a complete transcript could be left in safety to the Supreme Court. It might, however, be a safe rule, while permitting the parties to agree upon an abstract if they desired, yet to leave it optional, without any penalty, to prepare or demand a complete transcript of the evidence. In addition to this, the original pleadings and papers in the case could be sent to the Supreme Court, if desirable, and returned again when disposed of there.

Within certain limitations, this whole matter should be governed and provided for by the rules of the Supreme Court, so that any change found necessary or desirable could easily be made. In a short time the experience of bench and bar would bring about a settled practice on the line of economy in time and

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labor, such as would expedite business while carefully guarding every substantial right.

While such a change in our practice as above indicated may be desirable as a matter of general merit, yet another change might also be profitably made that would probably work even a greater good. It appears to be the opinion of our Supreme judges that as our law now stands an opinion must be filed in every case, while it is most undoubtedly the fact that in many instances this could well be omitted, and an order made simply reversing or affirming the case; though possibly in all cases of reversal an opinion should be filed for the guidance of the lower court. It would seem that the rule of common-sense should require a written opinion only in such cases of importance as would add to the jurisprudence of the State, while as an act of mercy to the lawyers who must pay for the reports, the publication should in some way be limited even aside from any consideration of the court itself. If such a rule were adopted the judges could, in probably the greater share of cases, dispose of them finally immediately upon the hearing and examination of the record, without being compelled to read and examine all of the cases cited in order to prepare a proper opinion for publication, while obviously a much greater number of cases could be disposed of and a great good done to the State. The court for several years now has been fully two years behind-hand, and little or no gain is made upon the docket.

There may be some objections to such a plan, but the fact that the greater share of opinions are seldom read, except by the parties in interest, sufficiently sustains the point that no serious harm would be done if such opinions were not required, while the aid in expediting business would be very great indeed.

What the world has been seeking is cheap and speedy justice, but the long delay now certain to be experienced works in many cases an absolute denial of justice, and gives to the wealthy litigant an undue advantage over his poorer and weaker neighbor.

It may be that the ideas here advanced may not have all the virtues claimed or hoped of them, but it is fairly the duty of the profession to devise some plan by which the business of the courts shall be more speedily disposed of, and a nearer approach to justice to litigants meted out. That a change of some kind may be devised in the preparation of records for the Supreme Court, that will save much time and labor, there can no longer be a doubt; and if the number of reports and reported cases can be curtailed, some good at least will be accomplished. If nothing else be done, it would seem fairly wise to empower the Supreme Court to publish or withhold written opinions, in the discretion of the judges. This alone would reduce the volume of reported cases, and might encourage the judges to the more summary disposition of all cases where there was no disagreement, at least to the extent of working off and keeping down any accumulation of business.

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REVIEW OF THE LEGISLATION OF THE SEVERAL STATES DURING THE PAST YEAR.

BY GEORGE S. GREEN, CHAIRMAN JUDICIARY COMMITTEE.

Since our last meeting, Legislatures have been in session in all of the States in New England and most of the Middle States, in about two-thirds of the Southern States, and all the west and northwest States with the exception of Iowa and the Territory of Utah, the two last named holding their biennial sessions in the even years. It may be of interest to the Association to note some of the legislation of the various States representing a population of over fifty millions of our common country.

LAWS AGAINST CRIME.

The Legislatures of California and Pennsylvania have declared that train-wrecking which causes loss of life shall be murder, and the parties convicted shall be punished with death or imprisonment in the State prison for life. California makes the advertising to procure divorces a misdemeanor. Arkansas has prescribed heavy penalties for prize-fighting. Alabama prohibits the keeping of cockpits and cock-fighting. Our neighboring State of Missouri makes it unlawful to conduct sparring matches in dramshops. (Evidently the State does not want its citizens to indulge in any side issues "between drinks.") Anti-gambling laws were passed in California and North Carolina, while Arkansas contents itself with making it a crime for any person of full age to bet with a minor.

Chastity has been protected by the enactment, by several of the Legislatures, of severe penalties. Among them may be named Minnesota, Oregon, and South Dakota. The age of consent has been raised in Colorado to sixteen, and in Wyoming to eighteen years, making it the same in the latter State as in our own. Colorado and Wyoming have passed laws for the protection of children from cruelty. The first-named State provides that no child under sixteen years of age shall be exhibited in any concert hall or other places of amusement; and humane associations may assume the guardianship of all such children.

Missouri has joined Kansas in making it a crime for persons to publish or circulate newspapers or other publications largely devoted to scandals and the description of immoral conduct; and the days of "*The Sunday Sun*" are full of trouble.

Texas makes prize-fighting a felony, and forbids any person from voluntarily engaging in a pugilistic encounter between man and man, or fight between man and bull, or between man and any other animal, for money or other thing of value.

Minnesota has declared that no saloon or bar shall be opened on election day; and that all detectives must be legal voters of the State.

The State of Maine, as a means of preventing crime, makes it the duty of all teachers in the public schools to devote no less than ten minutes of each

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week of the school term to teaching to the children under their charge the principles of kindness to birds and animals. Our own Legislature, at its last session, made but one change in our crimes act.

ALIEN LAND LAWS.

The passage of alien land laws has received more attention from the Legislatures in the west States than almost any other subject which has commanded the consideration of the law-making power of the various States. And when we come to consider the vast amount of capital which has come to this country from across the water in the last few years, it is not to be wondered that some measures should be taken to control the ownership of land and place some restriction upon citizens of other countries from acquiring great tracts of the public domain.

Texas has perhaps gone to as great a limit in this direction as any other State in the Union. The law as passed by the Legislature was approved April 13, 1891, and went into effect on the 14th day of July following. It provides that "No alien or a person who is not a citizen of the United States of America shall acquire title to or own any interest in the lands within the State of Texas; and any deed or other conveyance purporting to convey such title or interest to any alien or unnaturalized foreigner, or to any firm, company, or corporation composed of such in whole or in part, shall be void." Any alien may, "for a vauable consideration, take, hold, assign, foreclose, sell or buy under any mortgage or deed of trust, any lands within the State of Texas in which he has an interest by virtue of having heretofore made a loan of money, subject to the provisions of the chapter in reference to alienating said lands within six years, as therein required. If any alien shall undertake to hold lands for a longer period, or in any way contrary to the provisions of the law, such lands shall escheat to the State in the same manner as estates of deceased persons without any devise and having no heirs."

The effect of this law is far-reaching, and if permitted to stand will greatly affect property interests in that State. This law has an important bearing upon the investment of mutual life insurance companies in that State. The opinion of a leading lawyer of the State was asked as to the application of the law to a corporation in which perhaps a single member or stockholder happened to be an alien. The attorney replied: "I believe the law to be constitutional. The act was not capable of any construction which would exempt mutual companies from its evil effects. That the attempt to do business through a trustee would subject a company to harassing suits by officials who might hope to achieve a cheap reputation at the expense of the friendless corporation or the terrible foreigner. That the State has been submerged by a wave of the sort of prejudice shown in this act. Many good men who do not lack in courage to face real dangers are shivering with dread lest the awful foreigner shall come in and own us all. The law is on the statute book, and must stand until repealed. It cannot be repealed until the Legislature meets on the first Monday in January, 1893, unless the Governor shall see fit to convene the Legislature in extra session."

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This act has been regarded as a public calamity to the State of Texas. The Supreme Court of the State has recently held the law unconstitutional.

Illinois has amended its alien land law so as to require a copy of the declaration of intention to become a citizen of the United States, upon the part of males, and an affidavit from the female that she is in good faith an actual resident of the United States, to be filed in the office of the recorder of deeds of the county in which he or she has acquired lands; and has authorized aliens to convey land to citizens of the United States or incumber the same in favor of a citizen.

Idaho has restricted the ownership of real estate, other than mineral lands, by aliens, except that aliens may obtain title in the enforcement of liens, and heirs by inheritance, but land so acquired must be sold in five years. All aliens, except persons of Mongolian descent not born in the United States, can hold mining property.

California has passed an act prohibiting absolutely the coming of Chinese persons into the State, whether subjects of the Chinese Empire or otherwise.

Idaho and some other States have forbidden the employment upon all public works of persons not citizens of the United States, or who have not declared their intention to become such, or who are not eligible to citizenship.

The question of proper legislation both with reference to the personal and property rights of aliens has become and is a burning one, not only for all those who have a part in framing the laws of the several States and Territories, but the people generally, and associations similar to our own in particular, when we reflect that the immigration continues with increased volume to our shores. The number of arrivals of foreign immigrants in the year just closed reached a grand total of 560,319 souls, being an increase over the year previous of 105,017. As has been stated, "much of this immigration is foreign in race, faith, and habits." While some classes manifest a marked tendency to assimilate with and become a part of our government, others aggravate the social compact and become disturbing elements in the communities in which they locate. It will require wise laws judiciously administered to control this discordant element, which is annually being augmented in many of the different States of the Union.

RAILROAD LEGISLATION.

In the way of railroad legislation, two States have created commissions in the past year, namely, North Carolina and Texas. In the former the commission is made a court of record, inferior only to the Supreme Court, and given all the powers of a court of general jurisdiction as to all subjects embraced in the act creating such commission, and appeals lie from this court to the Supreme Court.

Alabama, Arkansas, Tennessee and Texas passed during the year "separate-coach acts," which provide that all railways carrying passengers in their coaches shall provide equal but separate and sufficient accommodations for white and African races by providing two or more coaches for each passenger train, except on short roads coaches may be divided by a partition so as to secure separate accommodations; and the railroad companies are also required to provide

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separate waiting-rooms for the two races. No person or persons are permitted to occupy seats in coaches or waiting-rooms other than the ones assigned to them on account of the race to which they belong. Persons in whom there is a visible and distinct admixture of African blood shall, for the purposes of the various acts, be deemed to belong to the African race; all others shall be deemed to belong to the white race.

North Carolina requires railroad companies to redeem all unused tickets at the prices paid for them, and makes it unlawful for any but duly authorized agents of the various railroad companies operating in the State to sell or deal in tickets issued by any railroad company.

North Dakota makes it the duty of every railroad company in the State to burn the grass and weeds or other combustible matter upon the right-of-way of such railroads. Michigan imposes a similar duty in requiring the destruction of all noxious weeds growing upon the land unoccupied by any railroad company in that State.

By an act of the Legislature of Maine, approved March 31, 1891, whenever any serious accident occurs upon any line of railroad, to any passenger or freight train, it is made the duty of such railroad company to give notice to the board of railroad commissioners of such accident; and it is also made the duty of such board to investigate the accident, and make a report to the county attorney of the county in which the accident occurred, and also to the railroad company concerned. The board is also required to publish the same in its annual report.

Minnesota has forbidden any company operating a railroad in that State from requiring trainmen to work for more than twenty consecutive hours, or twenty hours within a period of twenty-four hours, or, except in case of casualty, to again go on duty or perform any work until they have had at least eight hours' rest; ten hours is made a day's work, and employés must be paid extra for all extra time.

Wyoming requires the burning of a fire-guard upon each side of the road-bed of all railroads in that State, between the first day of September and the first day of November of each year, so as to prevent fire from spreading to lands adjacent to such right-of-way.

It will thus be seen from this cursory review of some of the railroad legislation of the several States, that there is a growing tendency to protect life and property in the operation of railroads; and there is a necessity for such protection. In 1890, brakemen to the number of 369 were killed, and 7,841 injured, while coupling cars alone. The total number killed during the past year was 2,451, and the number injured, 22,390.

LAWS FOR THE PROTECTION OF LABOR.

A number of States have passed laws during the year 1891 for the protection of laborers, fixing the weekly payment of wages, and prescribing the number of hours which shall constitute a day's work. Nebraska's eight-hour law is perhaps the most far-reaching enactment of the kind. It applies to all mechanics, servants and laborers, except those engaged in farming or domestic labor.

Oregon has passed an anti-boycotting law, which makes it a misdemeanor

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for any person by force, threats, or intimidation, to attempt to prevent any person employed by another from continuing work or from accepting any new employment, or shall induce others not to buy from or sell to or have dealings with any persons, or shall try to compel any person to employ or discharge from his employment anyone, or to alter his mode of carrying on his business, or to limit or increase the number of his employés, or the rate of wages, or time of service of such persons who may be employed.

Pennsylvania has passed, during the year, an act to relieve employés from certain prosecutions and punishments for conspiracy, under the common law or under the criminal laws of the Commonwealth. It provides that it shall be lawful for employés, acting either as individuals or collectively, to refuse to work or labor for any person or corporation whenever, in his or their opinion, the wages paid are insufficient, or his or their treatment is offensive or unjust, or whenever the continued labor or work by the party would be contrary to the constitution, rules and regulations of any club or association of which the party may be a member, or may have attended; and it is made lawful for any person to devise and adopt ways and means to make such rules and regulations effective, without subjecting them to indictment for conspiracy at common law, or under the criminal laws of the State.

California has passed an act providing for a State board of arbitration and conciliation for the settlement of differences between employers and employés, as well as other labor questions.

There has been a marked opposition during the past year to the employment of detectives in a number of States, and it has been made manifest in Arkansas, Colorado, Idaho, Minnesota, Wyoming, and New Mexico Territory, by the passage of laws requiring all deputy sheriffs and detectives to be residents of the respective States and Territories in which they act.

A MOVMENT IN FAVOR OF UNIFORM DIVORCE LAWS.

The New York Legislature created a commission in 1890 which had for its object the framing of some general system regulating divorce proceedings in the different States. Delaware, Massachusetts, New Jersey, and Pennsylvania created similar commissions in 1891. The necessity for such uniform legislation is apparent to all. Mr. Carroll D. Wright, Commissioner of Labor Statistics, says that while marriages do not keep pace with the increased population, divorces on the other hand increase much faster than the population. During the twenty years from 1866 to 1886 there were 328,716 divorces granted in the United States, showing an increase of 157 per cent. in that period, while the population only increased 60 per cent. in the same length of time. The divorce statistics of the last decade show that the disproportion is still increasing. It is stated that in one small town in South Dakota, during a recent snow blockade, a coöperative colony of one hundred was waiting until the court could relieve them of their marital ties. In a late number of the *Central Law Journal* it was said that this State "has been of late overwhelmed by people from other States seeking for divorces; and the statement has been going the rounds of the press that a certain prominent lady in one of the eastern States, whose do-

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mestic infelicity has become a matter of public notoriety, is about to start for that State with a view of obtaining a divorce there. For some time past its courts, it is reported, have been converted into divorce mills, whose popularity rivals many of the older grinding establishments. The reason for this appears to be not so much the liberality of the statute as to the causes for which a divorce may be granted, as the brevity of the period of residence—ninety days only being required before an application can be filed.

"The obvious remedy for the evil would be to increase the required period to at least one year, as in most of the States, and also to require some evidence that the petitioner is not a resident for divorce purposes only.

"It is the plain duty of every State to discourage as much as possible the formation of divorce colonies. Such contentions should be tried and decided in the localities where the parties are really resident, and where the merits of the case are more readily reached. And we dare say that the troubles of actual residents of South Dakota can furnish sufficient occupation for the judicial machinery without opening its doors to divorce-seekers from all other sections of the country."

Marriage records are required to be kept in only sixteen States, and this want of any record, and the laxity of keeping the records where they are required, and the general feeling of indifference which prevails upon the whole subject of marriage legislation, are among some of the many causes for the great number of divorce cases, together with the ease with which divorces can be obtained.

While it is the opinion of the Commissioner of Labor Statistics that divorces are necessary in the present condition of society, he would restrict it so that no *ex parte* divorce should be granted, and that in every suit for a divorce the State should be a party. He would also make marriages more difficult by enactments that would prevent hasty unions, and that would punish a party guilty of any indiscreet, disapproved and discreditable marriage.

ELECTION LAWS.

At present thirty States of the Union have what might be termed the Australian system of voting. A number of States have what are called "corrupt-practice acts," following closely the New York law of 1890.

South Dakota adopts a part of the New York law, but does not require the publication of candidates' expenses. Michigan requires a statement of the expenses in gross, with an affidavit that there have been no illegal expenses paid.

In Washington, West Virginia, and Wyoming, as well as Kansas, an effort has been made to bring all primary elections under legal regulations.

Michigan will choose her Presidential electors in 1892 by districts. This is regarded as an important change, and may have some bearing upon the result of the next national election.

THE LEGISLATURE OF OUR OWN STATE.

A general banking law was passed. An amendment was made to the code of civil procedure in regard to the sale of lands upon execution. This change

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gives the party ordering the sale the right to designate the newspaper in which the publication can be made. Another amendment was made in regard to additional security for costs upon notice to the adverse party. A third amendment was passed making a slight change in the laws in regard to service by publication upon non-residents and domestic corporations which have not been legally dissolved. These three acts comprise the only changes made in the code of civil procedure.

Paragraph 2609 of the General Statutes of 1889, in relation to descents and distribution, was amended so that estates would descend in equal shares to the children surviving the decedent, and the living issue, if any, of prior deceased children; but such issue shall collectively inherit only that share to which their parent would have been entitled had he been living.

A slight change was made in the lien law. An irrigation law was enacted; also an act regulating warehouses and providing for the inspection of grain. These comprise about all the laws of a general nature. Yet we find in the same session laws more than fifty acts of the Legislature vacating all or parts of townsites, and several laws changing the names of half a score of children and one town-site, all of which could have been done by the local courts and authorities. Each session of our Legislature furnishes ample proof that we have entirely too much local legislation, a practice which should be discontinued in legislative work.

An effort was made at the last session of this Association to secure some relief from the over-crowded condition of the docket of the Supreme Court, but without effect. Nothing can be added to what was then said as to the absolute necessity for such relief. In 1890, eight hundred and ninety-three new cases were filed in the Supreme Court and six hundred disposed of, leaving a net accumulation for that year of two hundred and ninety-three cases. In the year just closed, seven hundred and eighty-eight new cases have been filed and six hundred and fifty-six decided by the court, leaving one hundred and thirty-two more cases filed than disposed of, or an accumulation of four hundred and twenty-five cases in the two years. The court is now considering cases filed in July, 1889.

It will be seen from this imperfect and hasty review of the legislation of some of the States, that law reforms have not been forgotten or neglected during the past year. Congress has created a new appellate court to relieve the docket of the Supreme Court of the United States; the standard of educational instruction has been raised in a great many of the States; State boards of charities and correction have been created in the newer States to care for the unfortunate; there has been an effort at prison reform and the abolition of the convict lease system in some of the Southern States, but not yet accomplished; a number of the newer and some of the older States have established boards of health to prevent the spread of contagious diseases and protect the health of the people. All would indicate that while law is conservative, as well as stable, the States are progressive.

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LEGAL EDUCATION AND QUALIFICATIONS FOR ADMISSION TO THE BAR.

BY JAMES HUMPHREY.

This subject may be viewed in the threefold aspect of how it affects the community, the court and bar, and the individual applicant for admission and recognition as a lawyer. That measures and precautions should be taken by the courts to insure, in conferring upon candidates for admission to the privileges of the bar, to the community reasonably safe and prudent counselors, there can hardly be room for question.

The public has manifested its purpose in this respect in a statute by requiring two years' study and preparation as a condition for admission. This is a limitation upon candidates, but not upon the court. The person who has read law for two years must nevertheless satisfy the court that he possesses the requisite learning, and that he is of good moral character, before he may claim admission.

In every civilized community lawyers—that is, persons learned in the law and skilled in its application to the affairs of life—are indispensable. The more differentiated society becomes in its organization and its varied interests, the more important and difficult becomes the function of the lawyer. The adjustment of its multiplied and complicated relations, and the determination of the rights and obligations growing out of these, call for the exercise of that profounder skill that comes only from an enlarged and special knowledge and trained judgment.

When a person has received the sanction and authority of a court to assume the character and functions of a lawyer, the community is invited to trust him, to confide in his knowledge, skill and integrity to manage such of the affairs pertaining to the business of its members as have passed beyond their ability to conduct without the advice and aid of the lawyer. If the man thus employed is deficient in the knowledge and technical skill which the exigency requires; if his interference, instead of being helpful, is mischievous; or if he turns his skill into channels of mere self-seeking, the court that sent him out has simply armed him with a commission to prey upon the community with deceptive arts. The court, which should stand as a bulwark of protection to the public, thus becomes the instrument to multiply its parasites and decrease its substance.

It is not to be supposed that every man who applies for admission to the bar, and who appears, upon examination, to possess the requisite degree of knowledge of the rules and principles of the law, will for that reason become a successful practitioner. In addition there must be a skill and aptitude in their application which rests upon a power to discriminate and a trained judgment. These cannot well be put to a satisfactory test in the conduct of an examination. Their possession or their absence can only be adequately discovered by later experience. But those thus deficient, if diligent, modest, and well inten-

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tioned, may, becoming aware of their deficiencies, settle down into subordinate conditions of usefulness.

It is the fellow with a smattering of knowledge, and unduly swollen with pretensions, who makes the walls of the court-room echo with his windy bombast, and fills the breast of the judge with an aching void, who is to be avoided. Such a man is likely to confound and capture the groundlings, and pursue a noisy and mischievous career.

The court and bar, besides owing to the community the important duty of guarding it against charlatans in the legal profession, are under the highest obligations to prevent the profanation of public justice by their intrusion into its sacred precincts.

There is no profession or vocation existing among mankind so important as the legal profession. There is none in which a man may be more useful or mischievous. In the civil state the court is invested with the highest and most solemn functions that public authority can confer. The judge is the arbiter of the rights, and frequently of the destinies, of his fellow-men.

To the legislative power is committed the duty of appointing the rules by which men shall govern themselves as members of society. To the court is confided the power or function of determining in individual cases whether the conduct of men is within the measure of those rules, or has transgressed them, and the measure of redress or animadversion which the ascertained transgression demands. The Legislature deals with abstract forms; the court with concrete realities.

The chief and ultimate end and object of the institution of government is to establish and maintain just and equitable relations among men, and the last and greatest instrumentality to the accomplishment of this end is the court. Its chief concern is to ascertain from conflicting statements, prompted by contending interests, the truth in relation to the matters before it, and to determine the measure of obligation and right which the fact implies. If it misses the truth, not only does it fail to answer the end of its existence, but functions designed as a shield to innocence and a guaranty of human rights are perverted and become the allies of guilt and wrong. It is the province of the lawyer to aid the court in the ascertainment of the truth, and to guide to a correct and just judgment.

Hence the importance to the court that it should be surrounded with an educated bar. I hardly need to advert to the vicious effect upon the moral tone of the bar and its loss in the estimation of the public as a result of admitting incompetent and unworthy members. It is one of the *learned* professions, with a literature so vast and extensive as to defy the ordinary span of human life to range over its wide domain — a literature which strikes its roots deep down into problems as abstruse and as momentous as any with which the human intellect has to deal; a literature cast in a mould as severely logical as geometrical formulas. Such indeed it must be if we fulfill the idea of justice, the fundamental concept of legal systems, since we must deduce from general or universal rules the rule to be applied to each individual case. How elevating and stimulating to both bench and bar it must be to admit an ignoramus to its ranks!

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Competition from this class is not to be feared by the better class of lawyers. What is to be feared is the degradation of the professional character, and the diminution of that degree of respect for it which should ever be preserved in the public mind. Loss of public respect and confidence impairs professional influence in various ways. It leads jurors to receive with suspicion the statements and arguments addressed to them by members of the bar in the course of their professional employments. In this way it tends to weaken the administration of justice by introducing additional elements of uncertainty. Moreover, the moral influence of law upon the human mind is weakened, since in the minds of the great mass of the people law and lawyers are intimately associated together. This is a consideration of considerable importance. We have no great and hoary traditions embodied in institutions which reach back, like many of those of the Old World, into dim and distant ages, to excite our veneration and command our allegiance. The principal social bond which binds the communities scattered over this broad land into a homogeneous body, coördinating its various members, and preserving its organic unity, is the constitution and laws of the land.

So much the more, then, do we need to cultivate and strengthen in the public mind the legal sense as a means of preserving the liberties of the people, and the institutions in which they have their root.

The situation in which a people hastily thrown together, coming from all sections of the country and from foreign states to build a new commonwealth, find themselves, forces them to make use of such material for the various public functions as the circumstances present. Natural selection and the survival of the fittest come in later. I think the time has arrived when it is safe to permit these selective forces to have freer play. We have passed beyond the first crude stage of litigation, wherein the general lack of variety of employments and interests gave rise to a simpler and more uniform course of legal justice. With the rise and growth of a vast variety of corporate and other interests, which present questions of greater magnitude and complexity, new and more exacting demands are made upon the legal profession in the State. These demand a more thorough and exact training. The facilities for acquiring such an education have been greatly advanced, and there is no longer any ground of excuse for sweeping into the bar all sorts of odds and ends.

It is not easy to set forth, except in a general way, the extent and precise character of qualifications which should be demanded of applicants for admission to the bar.

No man who has not first acquired a liberal education should think of entering upon the study of the law with a view to a professional career. Without such education a man may gain a smattering of the law, but can never obtain a clear insight into its principles. The law in its general tenor and spirit is a science. It is a development of a theory of human rights — rights springing from a thousand sources, and presenting every variety of situation and aspect. It must be consistent, coherent, and maintain a strictly logical attitude throughout, or else the measure of one man's rights will fail to be the measure of another's, and thus an equality of rights would be defeated; that is, the law as

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such would be defeated, and human rights become the sport of fancies. All human affairs are involved in law, and all these affairs are based upon reasons which relate them to and are limited by the nature of things. It is the province of science to reveal, not exactly the nature of things, but the relation of human affairs to them, and a liberal education will equip the mind with an intelligent apprehension of many of these relationships; and since it is the problem of the law to find the element of justice in these affairs, some knowledge of their underlying principles seems to be necessary.

But besides, an amount of mental training sufficient to quicken the mind and mature the judgment would seem to be a requisite qualification. The literature of the law differs from that of the other professions: for example, the medical and military sciences have their own peculiar nomenclature. This assists the memory and conduces to an easier and clearer apprehension of the facts and reasons of these sciences, from the fact that a definite meaning is affixed to the technical terms they employ, which suggests to the mind but one idea. But the law is couched in the common language of mankind; it employs a vaster vocabulary, and makes a greater draft upon the discriminating and reasoning powers of man. It is coëxtensive with human affairs, and is the great source of their fructification.

I do not mean by this that every applicant should be deeply versed in science, or should have a collegiate training. The more of these a student has, the more complete will be his equipment for professional life. But what I do mean is, that a man quite destitute of a knowledge of the more general principles of science cannot acquire an extensive nor accurate knowledge of the law, and a man who has not enjoyed the privileges of a collegiate training should have imposed upon himself a mental discipline scarcely less severe.

I do not feel myself called upon to mark out a course of preliminary legal study, but only to indicate the extent to which that study should be prosecuted to entitle to admission to the bar.

It is impossible within the brief period of two years — the usual time thought necessary in which to prosecute a course of legal study preparatory to admission to the bar — to range over all the topics of the law, even in the most superficial manner. An attempt to do so would rather lead to confusion than to a clear understanding of legal principles. The main object is to acquire a firm grasp of fundamental truths; to ascertain the real foundation upon which the vast superstructure rests.

This can best be accomplished by a careful and intelligent study of the old masters of the law, Coke upon Littleton, Blackstone and Chitty, Kent and Story, Starkie and Greenleaf, Adams and Byles.

In mentioning the works of these authors as worthy of employing the laborious days and nights of the student, I do not mean to exclude many others of varying merit. But these are among the classics of the law, and are destined to maintain a permanent place in its literature.

Many of our modern text-books are not treatises on law topics which they profess to explain, but a mere editing of adjudged cases. These are useful if well done, and help the busy lawyer to find the law. One of the most useful,

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I might say necessary, parts of a legal education, is to become familiar with the sources of the law; to learn where to look for it. George III of England, it is said, perplexed with the success of Erskine in bringing to his aid the old masters of the English law, in his efforts to break the fetters which the government was imposing upon the speech and press of England, by an artificial construction of the law of libel, used to say that he could be as good a lawyer as Erskine if he knew where to look for the law — which proves that the king had lucid intervals.

This leads me to observe that one of the methods of study should embrace an examination of the leading cases. It is recorded of Sir James Scarlett, one of the most successful advocates at the English bar, that he was in the habit when a student of extracting the facts from cases, writing his own conclusion upon them, and then comparing his own reasoning and conclusion with those expressed by the judges, and thus correcting his own reasoning and acquiring a knowledge of the law from the adjudged cases. By this method the mind becomes skilled in the application of the law to varied facts and circumstances.

The applicant for admission should be able to display in his examination a fair or competent understanding of the law, and a correct application of it in several, at least, of the leading departments; such, for example, as contracts, partnerships, corporations, real estate, including the principles upon which certain classes of acts are differentiated into crimes. He should also show a reasonably proficient knowledge of the rules of pleading and practice, both in civil and criminal cases.

Whether or not a student comes to the bar well or poorly equipped, depends upon the bench and bar. The practice which has usually obtained in this respect has been loose and slipshod, manifesting in the majority of cases a singular lack of any sense of responsibility in the matter. The usual method is to appoint a committee of members of the bar to examine applicants during a term of court. These retire in some spare hour from the duties of the court-room, and propound to the candidate such questions as, without previous thought or preparation, may occur to their minds. The questions and answers are oral, and no score or record is kept of them. The examinations are brief, superficial, and the run of questions is usually of a random and rambling character. Such an examination lacks system; it furnishes no test of the proficiency or merit of the candidate. In the first place, it is wholly insufficient, in that it neither covers enough ground, nor is it at all likely that the questions asked will relate to matters which it is most important the candidate should know. In the second place, it is unjust to the student, in that the questions will frequently lack that precision and form necessary to convey to the student's mind the idea sought to be conveyed. He is confused with the question, and it will be little wonder if he returns the examiners' confusion with interest. Moreover, it is not every question which is liable to turn up in the course of an oral examination that a proficient student will be able to answer without time for brief reflection. But after a brief and perfunctory examination, if the answers have been fairly intelligent, or if the candidate is regarded as a good fellow, and he displays less intelligence, a favorable report is made and he is sworn in. He may then pursue

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a useful career in his modest way if he possesses genuine merit, or howl his flaming platitudes in the ears of judges and juries if but a wind-bag.

Such a method of manufacturing lawyers is in urgent need of reform. The statute provides that the candidate for admission must satisfy the court that he possesses the requisite legal learning and qualifications. In practice he needs but satisfy a committee of three members of the bar, and these are often satisfied with a bottle of champagne and a few cigars.

I think that the following method would better conform to the requirements of the statute: The judge of the district to appoint a standing committee, to whom all applications should be sent. The committee appoint a convenient time and place, once or twice a year as might be necessary, to examine candidates for admission. The examinations to be upon prepared interrogations, a copy to be furnished each candidate, whose answers shall be in writing. The examination papers with the report of the committee to be submitted to the court for its examination and judgment, and all papers to be preserved upon the files of the court.

Such a method would prevent the examination from degenerating into a convivial farce, would furnish a better test of qualifications both as to legal learning and literary ability, and would afford to the candidates better opportunity for returning correct answers. It would enable the judge to comply with the letter and spirit of the statute, and to perform an important duty in a becoming manner.

Such examinations would show students the necessity of more systematic and thorough legal study than can usually be pursued amid the interruptions and distractions of a lawyer's office. It would send a greater number of young men who contemplate a preparation for the bar to the law schools, where the most approved courses of legal study are mapped out for the student and pursued under the immediate direction of learned and experienced professors.

In the great majority of cases young men will make greater progress in a line of study when pursuing it in concert with others, than by solitary application. Two years in a well arranged and conducted law school is ordinarily worth three in a lawyer's office. So long as the minimum period of preliminary study remains so brief as that now prescribed, students need to be impressed with the importance of employing it in the most useful and efficient manner.

The future of the bench and bar is in our hands. We can mould it into a high state of efficiency in the service of the public, and impress upon its character and spirit an elevated moral tone. This is a solemn duty we owe to the public. Every consideration that can be addressed to professional pride, and every interest connected with the welfare of the State and its people, appeals to our fidelity to this great trust.

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LEGAL EDUCATION.

BY J. W. GREEN.

The subject of legal education is perhaps of more importance and interest to the lawyer than it is to one about to begin the study of the law. And whether the practitioner began his legal education in an office and in the old-fashioned way, was handed a copy of Blackstone and was told when he finished the first volume he would find the second on the shelf; or whether he attended a law school, he is quite apt in either case to be somewhat dissatisfied with his preparation for the bar. And while the discussion of this question may not be instructive, it ought, at least for the memories it arouses, be interesting, for it carries each one of us back to the most delightful period of his life. Can you recall it? A period pregnant with hope and lofty aspiration, when that radiant maiden Success with the "leer of invitation" challenged the lithe and fleet of foot. The vulgar problem of "bread and butter" did not then demand daily solution, and the mind of the youth, filled with a vision of a "*turba clientium*" crowding his office to pour a stream of glittering fees into his lap, only longed for the time to come that he might rush forth, behold his adversary and "run for the immortal garland through dust and heat." And whether we entered upon the study of law fresh from college, or the public school, with education more or less according to the opportunity afforded, I am quite sure that most of us will acknowledge that we were poorly equipped to woo our mistress, the Law. And in respect to the preliminary question as to what education is necessary before the study of law is begun, we shall all doubtless differ—differ perhaps as to how little education the student ought to have to begin the study of the law, but not as to how much.

The inquiry is continually made of those engaged in teaching the law, "Is the common-school education sufficient? Can a person study law to an advantage who has not graduated from some college or university?" The inquiry is usually made by one who seeks to be advised as to how little education will suffice, instead of how much is necessary. If honestly made, the inquirer seeks to know what preparation will enable him to begin the work with the greatest economy of time and with the greatest benefit to himself. Anxious to begin his life-work and to earn money, he hesitates to spend the time that is necessary for the preparation and completion of a college course. He has read of Lincoln, with little or no education, hardly able to read, poring over his law book by the light of a pine-knot, and the example of genius unaided becoming a brilliant and learned lawyer leads him to ask, "Why not I?"

Men are frequently met with who are called self-made and self-educated—men who have had their mental powers trained by circumstances which quickened their habits of attention and observation, and they are thus enabled to form prompt and intelligent judgment. Often these men trained in this way excel those who have had the advantages of schools and colleges. But however able

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they may be in the qualities thus brought out, and however bright and intelligent they may appear in their especial lines, they lack the power to turn to other and different lines of thought which is the province of a liberal education to supply. The person taught by circumstances arrives at his conclusions by intuition, and the person well prepared by a liberal education arrives at the same point by reason and reflection. If the problem lies within the range of experience of the self-made man, he solves it promptly and generally satisfactorily. Take him out of the beaten track, he stumbles and falls. There are certain qualities of the mind which must be trained and strengthened to fit a person for any one of the professions. The gladiator by proper and continued exercise of the muscles of his body fits himself to perform wonderful feats of strength and agility. His superb strength is not gained in a day and by one effort, but it is by a process of slow development. In the same manner must the mental athlete increase his brain power if he desires to win the prize. It is the object and duty of the college to furnish the proper training for this increase of mental power, and the courses of study therein prescribed have this end in view. The benefit derived from a university education is not so much the knowledge gained, as the discipline it gives the mind in acquiring knowledge, and how to use it when acquired.

Again, when we consider the varied duties which a lawyer is called upon to perform in this country, the necessity of a broad and liberal education is at once apparent. He is not only the legal interpreter for the community, but he is the expounder of the economic problems of the day, and must be prepared to intelligently discuss all the civic and social questions which arise. He must have some knowledge of business affairs, and how the details of business should be conducted; and, above all, he is expected to have a knowledge of and be able to present the political topics which are before the people.

If the lawyer shall confine himself strictly to the practice of his profession, there is no power or quality of his mind that he can afford to neglect. There is no branch of science, literature or art which may be thrown aside as useless in his education. A knowledge of any one of these may be required when least expected.

In brief, a student cannot be too well equipped, for he has too little time after he has begun the study and practice of his profession to supply deficiencies in his preparatory work. It should be done in advance. It is true a knowledge of Latin and Greek is not necessary for a student of law, but they give him a generous vocabulary; they are the foundations of the English language, and the study of these branches gives him this discipline we contend for.

A knowledge of higher mathematics may never be required by the lawyer in his practice, but a study of these branches is a powerful stimulant to his reasoning powers.

Many branches of science are useful to the practitioner, and must be acquired at some time: why should they not be required of the student before he begins his law studies?

While I am not prepared to say that persons with a good common-school

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education should not be permitted to begin the study of law, I am of the opinion that a more liberal education cannot be too highly recommended. And I would say that before a student should begin the study of law, he should at least have a thorough knowledge of the English language; and to this I would add a knowledge of the elementary and constitutional principles of the Municipal Law of England and the History of the Constitution of the United States.

Prepared to begin the study of the law, the student asks, "Shall I study in an office, or attend a law school?" The great peril attendant upon the study of law in an office is that the busy lawyer has but little time in which to exercise the duty of a tutor; occupied with his cases, he dislikes to be interrupted, and the student is a bold one who dares intrude upon his time. The student must therefore be left to study cursorily. His study not being directed, he gains but little idea of what he reads, and it is impossible that he should grasp the trend of the law and drink in its spirit. To be sure, a man may build a house who knows nothing about the use of tools or the laws of mechanics or architecture, but the chances are that the house will be better arranged, more symmetrical and better built if he has had some instruction in the principles of mechanics and architecture, and has been shown the proper use of the tools he handles. To be sure, the self-educated lawyer—and if he prepare for the bar in an office he is usually and almost certainly a self-educated lawyer—may become a learned and successful lawyer. but the chances are if the student be left to himself, as he necessarily is ninety-nine times out of a hundred, that he will get into slovenly habits of study, and that much valuable time will be frittered away, and the youth, at the start hungry for knowledge of the law and allured by what Milton has called its "prudent and heavenly contemplations," fails to derive that advantage from his early study he would have gained had he been properly directed.

A lover of Blackstone never fails to fortify himself with his authority at every opportunity, and I cannot help giving you his idea of the study of law in an office, fully believing that his words are as true to-day as when written. He says: "The evident want of some assistance in the rudiments of legal knowledge has given birth to a practice which, if ever it had grown to be general, must have proved of extremely pernicious consequence: I mean the custom by some so very warmly recommended, of dropping all liberal education as of no use to the students in the law, and placing them in its stead at the desk of some skillful attorney, in order to initiate them early in all the depths of practice, and render them more dexterous in the mechanical part of the business.

"A few instances or particular persons, men of excellent learning and unblemished integrity, who, in spite of this method of education, have shone in the foremost ranks of the bar, afforded some kind of sanction to this illiberal path of the profession, not considering that there are some geniuses formed to overcome all disadvantages, and that from such particular instances no general rule can be formed.

"Making, therefore, due allowance for one or two shining exceptions, experience may teach us to foretell that a lawyer thus educated to the bar in subservience to attorneys will find that he has begun at the wrong end.

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"If practice be the whole he is taught, practice will be the whole he will ever know. If he be uninstructed in the elements and first principles upon which the rule of practice is founded, the least variation from established precedent will totally distract and bewilder him. *Ita lex scripta est* is the utmost his knowledge will arrive at; he must never aspire to form and seldom expect to comprehend any arguments drawn *a priori* from the spirit of the laws and the natural foundations of justice."

In Blackstone's time it was seriously questioned whether the subject of law ought to be taught at the University of Oxford, and brought forth from that learned commentator this indignant exclamation: "I may safely affirm that nothing (how unusual soever) is under due regulations improper to be taught in this place, which is proper for a *gentleman* to learn. But a science which distinguishes the criterion of right and wrong; which teaches to establish the one and prevent, punish, or redress the other; which employs in its theory the noblest faculties of the soul, and exerts in its practice the cardinal virtues of the heart; a science which is universal in its use and extent, accommodated to each individual yet comprehending the whole community; that a science like this should have ever been deemed unnecessary to be studied in a university is a matter of astonishment and concern." And who shall now challenge the statement of Aristotle, that "Jurisprudence, or the knowledge of the law, is the principal or most perfect branch of ethics"? — for it has won the complete recognition of prudent and thoughtful men. To-day it has a place in the curriculum of all our colleges and universities. Separate schools are wholly engaged in the instruction of law, and the attention they are demanding and the work they are doing certainly calls for close examination before we determine to return to the old method of reading law in an office. The medical student now finds it impossible to fit himself for the practice of medicine unless he attends a course of lectures at some one of the schools of medicine. It has been determined by the medical profession that instructors whose attention is wholly given to the proper methods of instruction can accomplish better results than can be obtained by the undirected efforts of the student of medicine in the office of a practitioner.

It has been wisely said that "The benefits which law schools offer are easily suggested, and are of the most superior kind. They afford the student an acquaintance with general principles, difficult if not impossible to be otherwise obtained. They serve to remove difficulties which are inherent in scientific and technical phraseology, and they as a necessary consequence furnish the student with the means for a clear conception and accurate and precise expression. They familiarize him with leading cases, and the application of their discussion. They give him the valuable habit of attention, teach him familiar maxims, and offer him the priceless opportunity which results from contest and generous emulation. They lead him readily to view the law as a science, and imbue him with the principle of ethics as a true foundation; 'disputing, reasoning, reading and discoursing become his daily exercises'; he improves remarkably as he becomes acquainted with them and attains progress otherwise beyond his reach."

Three methods of instruction are used in the law schools of this country, one

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of which is known as the case method, the aim and purpose of which is to study the great and principal cases which are declared to be the real sources of the law, and to extract from them the rule which, when discovered, is found to be superior to all cases; the other method is for the instructor to give the student the result of his investigations, his view of legal principles, and their application, by means of lectures; the third method a use of text-book in which a lesson is assigned, supplemented by lectures and the citation of cases to be criticised. You will kindly pardon me if I sketch briefly, as the result of my experience, what should be in my opinion the wise method of instruction pursued in the law school.

A text-book should be used in recitation, in which the student should read each day from thirty to forty pages, on which he should be prepared to answer questions and give the reason for each proposition laid down by the author. He should also read as far as possible the cases cited in the text, which should be supplemented by selected cases given by the instructor illustrating the principles of the subject studied. The reason and spirit of the law should be taught, and the end of the instruction to be that the student should get a thorough mastery of the elementary principles of law; it being more important that the student should have a clear conception of what a contract in law is, than that some phase of the law of contracts has been decided by some court. The courts are quite uniform in opinion as to what a contract really is—they simply express an opinion as to whether certain facts constitute a contract—and when the student knows what a contract is, by reason of examination of different groups of facts that the courts have declared to constitute a contract, he will get a clearer conception of what a contract is. Cases should be closely discussed, and the reason, the soul of the opinion, should be laid bare. Discussion of principles as they arise in the lesson each day should be encouraged and demanded. Opportunity to question the instructor should be freely given, and all doubtful points should be endeavored to be cleared up, and a love for the law should be sought to be instilled into the student's mind, and he should be made to consider it a living thing instead of a dead precedent. And while he is taught to respect judicial opinion as for the time controlling, yet he should know that that which often struts as law by reason of its being judicial opinion, is not really the law; that the law is something different; that it is often declared by the court, and often not; that it is something—in the words of that distinguished jurist, Rufus Choate—"the judge does not make. Like the structure of the state itself, we found it around us at the earliest dawn of reason. It guarded the helplessness of our infancy, it restrained the passions of our youth, it protects the acquisitions of our manhood, it shields the sanctity of the grave, it executes the will of the departed. Invisible, omnipresent, a real yet palpable existence, it seems more a spirit, an abstraction, a whispered yet authoritative voice of all the past and all the good, than like the transient contrivance of altogether such as ourselves. We come to think of it not so much as a set of provisions and rules which we can make, amend and annul, as of a guide whom it is wiser to follow, an authority whom it is better to obey, a wisdom which it is not unbecoming to revere, a power, a superior, whose service is perfect freedom."

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In the report of the American Bar Association the Standing Committee on Legal Education, in 1891, among other things said — and as their views so closely coincide with my own, I take the liberty of quoting at length:

"The first object of the lawyer is to ascertain what are the facts upon which his client claims relief or interposes a defense. In these facts there is nothing as yet which suggests a rule of law. They must be reduced to legal or ultimate facts before the law can take notice of them at all. The law, like any other science, does not deal with individual cases, or with what it terms evidential facts. These must be brought under some general conception which the law has made the foundation of a liability before any authoritative rule can take notice of it.

"Hence the work of the lawyer must always mainly be with the legal facts or conceptions in the relations between which the law consists. All his advice to a client, every selection of a remedy, and, in short, all his work of any value to others, must depend upon his accurate conception of these ultimate facts, and of the system of rights and duties which they constitute. Hence all study of the law must eventually resolve itself into the definition and contents of these general conceptions. When the student knows exactly what is a contract or a promissory note or judgment, what is a trespass or a crime, what is a hereditament or a chattel, and so on, he has the material for the work which he has to do in law. The only remaining question is, by what means the thorough mastery of these conceptions, which are really the principles of the law, may be acquired. Can there be any doubt that they should be the first things taught to the beginner? Elementary law is only another name for them, or, rather, for the comprehensive and harmonious system composed of them. The system is harmonious, because all its rules depend upon the general conceptions in which the whole people agree. Is it not equally clear that the special applications to particular facts, and especially such parts of them as depend merely upon the decisions of the courts, should be kept back until the principles of law are thoroughly fixed in the mind of the student? The use of cases in illustration of these principles is of unquestionable service, and gives a precision to the knowledge of the student which he hardly could obtain otherwise; but we deprecate the use of cases alone without reference to the fundamental principles of the law, of which we believe them to be in all cases the application. The law is not made by cases in any other sense than as that every science is created by the thought and experiments of the men who pursue it. The historical growth of the law may undoubtedly be traced more accurately in the decisions of the courts than in any other manner; but the logical unity of the system, and the harmony of one decision with another, present another and different mode of study, which it would be very unwise to neglect. The only real test of a rule of the common law must be its consistency with other rules, or the harmony of the entire system. If two rules lead to different results in any case, they cannot be parts of the common law; and if both are allowed to remain, or be taught as authoritative, the only result must be a discrepancy in the decisions derived from them. For this reason we should urge that both methods of teaching should be employed in their proper relation in the course —

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the historical method for the purpose of showing how our present conception of the common law has come to be what it is, the logical method for the purpose of showing the relation of the rules of law to each other, and the mode in which they are all derived from certain great principles.

"Very much of the present uncertainty of the law is due to the ignorance or disregard of elementary principles and ideas, arising from the lack of attention to them at the outset of the student's course. He reasons imperfectly and unconclusively on the practical issues that are found in actual cases, because he has not been taught to deal with the same principles in their abstract forms as rights and duties or wrongs and remedies, unobscured by the infinite variety of facts in which these leading conceptions of the law usually present themselves in real life. No attempt is made in the presentation of legal truth, or if there is it is only such method as each text-writer has followed at his own caprice, without reference to that true scientific method that underlies every system or body of truth."

It is reasoning from general terms and principles that the lawyer's work is to be done. No amount of text-book learning, no familiarity even with cases, will avail him if he cannot reason from one set of facts to another by use of the exact terms in which the law sums up its principles. If this be true of the lawyer in the full swing of active practice, the same may be said of the student. The simple storing up in the memory of rule after rule, decision after decision, is of little value if he cannot apply his reason. The student should be taught the use of books, and to appreciate the truth of the statement in the introduction to John Milton's Areopagitica: "That every one, therefore, of necessity must read discriminately; often sifting and searching for principles, often testing the catenation of an argument, often treasuring up incidental truths for future use—the journey's end being truth."

The student should be given some knowledge of practice, taught how to draw a pleading, should learn the rules of evidence, and be required to distinguish what questions are considered material and relevant by examples given. He should be given cases to brief, he should be instructed how to prepare it properly, and his brief should be criticised. In moot court cases presided over by an instructor, he should be shown how to prepare an argument for the court, directed how to prepare a case for trial, and what preparation to make for an argument before a jury. I dare say no scientific school dares to presume to more than ground its pupils in the elements of the science it professes to teach, so in a two-years course in a law school there can be no higher hope than that the student should graduate with a fair knowledge of the principles of law, and be able to apply them in a fair measure. After all, the true test of instruction is, "Does it instruct?" and if the student goes forth imbued with a love for the law, if he has gained a knowledge of the principles of law, if he has learned how to use books, the ground-work of his legal education has been laid: the rest depends upon himself; and if he has been taught that integrity and untiring industry are the royal road to success in his profession, he is armed for the contest. Probably a knowledge of men is quite as important as a knowledge of law, in order to make a successful practitioner; but the ques-

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tion is not, what makes a successful lawyer, but what constitutes a legal education, and in what way is it best obtained — fully as difficult a question to answer as what is a liberal education and how gotten.

Many a successful lawyer has received no instruction whatever; he has been able to grasp unaided the principles of law and apply them; he needed no guidance. But the great mass of students need direction, need to be stimulated, need to be shown how to study law; and surely if the law school does nothing more than teach them how to study and opens up the fields of legal knowledge, it is serving its purpose and is deserving of the sympathy and the support of the bar of the State.

The qualifications which should be demanded of an applicant for admission to the bar are: First, that the applicant should be twenty-one years of age and a citizen of the United States; second, he should be required to pass an examination showing that he has a legal knowledge which qualifies him to practice law. An examination is a stimulant to close, hard study, even to the most ambitious and diligent student, and to the easy-going student it is absolutely necessary. By examination I do not mean a perfunctory one, such as is given in most of the courts of this State at the present time, but one which is thorough, fair, and far-reaching, and one which will test the student's knowledge of legal principles and the rules of pleading and practice. I am of the opinion that the time for preparation for the bar should be extended to three years. This is the shortest time which should be required of those students who are not well versed in the history of the United States and its constitution, and have not a fair knowledge of the history and general principles of the common and civil law. Possibly the time I have indicated is too short. The admission to the bar of persons poorly prepared is an injury to the profession and gives rise to those slurs and criticisms cast upon it, which we must admit are too often merited, and is also a positive injury to the community. We owe it to the people, if not to ourselves, to see that dishonesty, ignorance, and quackery shall not have a place at the bar. The ignorant practitioner must have a living, honestly if he can, dishonestly if he must, and he too often gains it by disreputable practices. We of the profession place a club in the hands of our critics, and claim that we are abused when they justly smite us.

As a remedy, I would suggest that an examination, both oral and written, be held by a committee appointed by the Supreme Court of the State twice a year at Topeka, and that all applicants for admission to the bar of the State should be required to pass this examination, with this exception, that persons presenting a certificate of admission to the Supreme Court of a sister State shall be admitted upon motion.

As gratuitous service is generally poorly performed, I would have this committee liberally paid for these services. This committee should be composed of members of the bar who would take pride in their position and come well prepared to perform their duty. These examinations should be held in public, and in fairness to the applicant should be upon principles of law found in the text-books, and not upon some case which the examiner has before the court,

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which he himself has not been able to satisfactorily decide after weeks of thought and study.

As all lawyers are in a hurry, or think they are, I would fix the time to be occupied in an examination at not less than two days, this in fairness to the applicant and to fairly accomplish the object sought. This plan may not make the writer popular with the student at first blush, but I am confident after giving it consideration it will meet his approbation, and will prove a great protection to his clients over the present rule of admission.

In closing, gentlemen, allow me to express the hope that the day will soon come when every lawyer in Kansas shall cry, with Milton:

> "What in me is dark, illumine;
> What is low, raise and support."

And with the need of a broader culture and a more liberal education pressing us, we shall make the requirements for admission to the bar greater, and uniform throughout the State, and then I think we shall find that we have not only benefited ourselves and served our clients better, but we shall have deserved the approbation of the present generation and shall have won the thanks of posterity.

FRAUD THROUGH THE CONFIDENTIAL RELATIONSHIPS.

BY JOHN E. HESSIN.

The subject of this paper implies the existence of the fact—that is, that at least there has existed in the past a condition which is called "fraud through the confidential relationships." Lawyers of general practice meet frequently with cases where the property of the debtor has been placed beyond the immediate reach of the creditor by means of these relationships; and so well established has been the fact, that text-writers treat of these relations under separate and distinct titles; and the law relating to transactions between themselves, and between them and third persons, has grown to such an extent that if collected would fill volumes; and thoughtful persons, noticing the decisions of the various courts upon the subject of the rights of persons occupying a position of confidence and trust, wherein are extended rights not heretofore enjoyed by this class of persons, must be impressed with the fact that the powers and rights thus given have a tendency to increase the opportunity for the perpetration of fraud upon creditors, and create dissatisfaction with the administration of justice, and call forth a statement frequently heard, that where some of these confidential relations exist (notably that of husband and wife) it is next to impossible to collect a debt from a dishonest debtor. The result which I have indicated has been brought about, first, by a statute relating to married women, and second, by judicial interpretation, addition, and construction.

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In the limited time given me it is impossible to consider the law or discuss the means of fraud through *all* the confidential relationships, or even touch upon them; so I have selected for discussion that of husband and wife, alone. I have done this because this relationship is the means of defrauding to a greater extent than any other, and because we can see from the existing laws upon the subject, as well as the various decisions of the courts of last resort, that these are the causes for the existence, in many cases, of fraud upon creditors: that is, the fact that husband and wife are permitted to transact business with each other in the same manner and to the same extent as with third persons, and the fact that the same protection is given them as is given to other persons, enables them by their peculiar relationship to accomplish results not attainable by others — not even in the confidential relationships. Under the common law the wife had no separate existence; could not contract with her husband, on this account, nor carry on business on her own account. She occupied such a position toward her husband that she had no especial legal existence, but was supposed to be under the influence of her husband entirely. This condition of things was not in harmony with the advanced ideas of the marriage relation, and such steps have been taken from time to time as tended (or at least were supposed to) to place them on an equality with men. I do not want to be understood as concluding that marriage, for these reasons, is a fraud, though from the affirmative of the much-discussed question, "Is marriage a failure?" might be deduced the proposition that it was also a fraud; and no doubt a jury composed of creditors who had been defrauded by means of this relationship would decide that it was both a failure and a fraud.

The idea that women should occupy this advanced position was embodied in an act relating to married women which took effect October 31, 1868, and has remained from that day without alteration. It is as follows:

1. The property, real and personal, which any woman in this State may own at the time of her marriage, and the rents, issues, profits or proceeds thereof, and any real, personal or mixed property which shall come to her by descent, devise or bequest, or the gift of any person except her husband, shall remain her sole and separate property, notwithstanding her marriage, and not be subject to the disposal of her husband, or liable for his debts.

2. A married woman, while the marriage relation subsists, may bargain, sell and convey her real and personal property, and enter into any contract with reference to the same in the same manner, to the same extent, and with like effect as a married man may in relation to his real and personal property.

3. A woman may, while married, sue and be sued, in the same manner as if she were unmarried.

4. Any married woman may carry on any trade or business, and perform any labor or services, on her sole and separate account; and the earnings of any married woman, from her trade, business, labor or services, shall be her sole and separate property, and may be used and invested by her in her own name.

The "rights of married women" as given in our statute makes no mention of any business relation with her husband. The first section provides that her

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separate property is not subject to his disposal. This is as far as any mention is made of the husband. All other matters included in the statute confer upon her privileges which married women *did not possess* before the law was enacted. Now from this statute has grown the law: That she may transact business on her own account. She "may purchase property direct from her husband." She may loan money direct to her husband and it may be credited on valid indebtedness. She may be the recipient of a valid gift from her husband. She may be preferred by her husband to other creditors (and she usually is). She is presumably the owner of property over which she exercises control. Neither does the law compel him (dear man) to plead the statute of limitations against her claim, though it be "stale and ancient." Nor will it permit the hard-fisted creditor to do it for her, it being a peculiar and personal right. Now this relation of husband and wife is one of peculiar trust and confidence. The authorities say: That the opportunity afforded by it for the perpetration of fraud is such that business transactions between them are scanned very closely. If the husband prefers his wife, (and the supposition is, that he, when he married her, did prefer her to all the world,) it is a reasonable proposition that when a creditor is pursuing the debtor husband in the collection of his debt that he will prefer her again. More especially when it amounts to no more than a change in *name* of ownership; because it is a well-known fact that it exists only in name, notwithstanding the evidence which may surround it as to the *bona fides* of the transaction. In truth, at least it would seem in special cases, that the condition of things had changed completely, so that the husband has lost *his* legal existence and revolves about his wife as the central orb without power to make contracts or carry on business or even draw wages. You have been humiliated, no doubt, by testimony of a witness (the husband) who says: That he has no property of his own. That the farm he lives on is his wife's, having been deeded to her in consideration of indebtedness to her. That he works on the farm without wages. That his wife boards and clothes him. That he is not employed for any fixed time, and that his tenure of these benefits is uncertain, depending wholly upon the caprice of the wife. And this for the purpose of enabling the wife to hold the property, which he knows he enjoys as much as when in his own name, and which at her decease will descend to him wholly, if there are no children, and the half in the event that there are children.

This opportunity to defraud creditors by means of this relation is enhanced by the law, now well settled, that inasmuch as she may deal directly with her husband, and may conduct business in her own name, and trade and traffic with whomsoever she pleases; that she may employ any person as her agent to transact business for her, and this agent may be her husband; and one author learnedly says: "That to deny her the right to select her husband as agent would constitute a very inequitable limitation upon her right of ownership, compelling her to resort to strangers for advice and assistance, and would perhaps seriously mar the harmony of the marriage relation"—and the author might have added, the harmony of their willingness to transfer the property, the one to the other, when occasion required. That every transfer of personal property must be ac-

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companied by possession, is a well-fixed principle. Under the rules as now existing, no change of possession is in fact made. Though the husband use it in precisely the same manner as before the transfer, he is doing it as the agent of his wife, and the law is fulfilled. Immediately upon a fraudulent transfer of property the husband becomes the agent of the wife, not only to manage and control (in fact), but her agent to defraud the creditor as well. He may, and often does, transact business, obtains credit for himself upon what he appears to own, his management and control being exclusive, the creditor having no knowledge of the existence of any agency, nor any other fact which could give him any information, and in the end a long-standing credit may be absolutely worthless because of the right he has and exercises in contracting indebtedness upon the *appearance* of owning property, the actual ownership of which is in the wife.

Another opportunity is afforded by this relation in the ability of the wife to present for payment a debt whose age is uncertain, and whose appearance, though shabby, is quite welcome, and of whose existence the creditor is unaware, and have it preferred to all other creditors, even if it takes all the property of the debtor. It will not answer in this case to say that the rule applies equally to other creditors, because, though it can, it never does except in rare instances, the ordinary mortal never resurrecting claims from the uncertain past for the purpose of payment, to the exclusion of other and later creditors. I may safely say that this spectacle is confined wholly to this relationship, and for the emergency only. No doubt when the millennium dawns debtors will be found willing to resurrect and pay claims "stale and ancient," and the creditor will smile a recognition in the hope of receiving that which was justly his, but which has been withheld by means of a relationship which rendered the attempt to collect useless, and hope of voluntary payment foolish; but I do not look for it sooner.

That my position with respect to the opportunity afforded by this relation to perpetrate fraud on creditors is well taken, let us consider some cases arising in our own State.

In 34 Kansas, on page 22, in a cause arising in Montgomery county, appears the following condition of facts: The defendant husband was indebted to the plaintiff in the sum of $2,200, in round numbers. The debt was just, of comparatively recent creation, and there seemed no valid objection to its payment. The creditor caused an attachment to issue, which was levied upon certain land which was claimed by the wife as her property. It appeared that the land had been conveyed to the wife through a trustee by the husband, for a debt claimed by her to be valid, and one which the husband recognized by making this the consideration named in the deed. This conveyance was made while he was insolvent, which the wife knew, but her object in taking the land was to secure her claim, and not to defraud others (of course!) Thus far it would seem that there could be no objection to the transaction. But let us look at the consideration. It appears that this action was heard in 1885. In the year 1849 the wife received $120 from her father, and some installments from 1877 to 1882, so that these amounts with interest amounted to $1,500. And upon this state of facts

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the court below discharged the attachment, which ruling was afterward sustained.

Now here was a debt of the existence of which the creditor had no knowledge. The wife knew of the embarrassment of the husband, and it is therefore proper to assume that she knew of this indebtedness and participated in its contraction, and probably derived benefits from it. But when the day for its payment drew near, she claimed to own the land by reason of this stale and ancient claim—a claim originating in 1849, when the land attached was embraced in "the Great American Desert," and was an *unknown* land; when the festive Indian sported his canoe upon Onion creek, and the banks of the classic Verdigris resounded with the yelp of the coyote and the bellow of the buffalo; a claim hoary with age; a claim which neither time nor tide, war nor pestilence, grasshoppers nor blizzards, the politics of the great Southwest, nor any other existing or impending evil, could kill or cripple; and though stale and dormant, (so stale that it smelled,) and though it had enjoyed a long and undisturbed repose, yet was electrified—a new breath of life breathed into it, and the smiling mummy was introduced, recognized, and carried off the land. It was urged before the court that this claim was stale and ancient, but it was said "that the mere fact that a claim is old is no reason why it should not be paid. The law allows a man to be honest and to pay an honest debt, however stale and ancient it may be. He may interpose the statute of limitations, but he may waive it, also. The law does not compel him to resort to this defense, nor can others insist upon it for him." And it was added that this was a defense to be offered by the debtor; and elsewhere, that the other defrauded creditors cannot plead it for him. Oh, trusting wife! Oh, just and upright man! *Vigilantibus non dormientibus Jura subveniunt* (?) And the plaintiff whose claim was "near and yet so far" was relegated to the uncertainty of a payment from some other source. He can waive the statute of limitations, or he can plead it; waive it in favor of his wife, and plead it against other creditors. The attorney for the plaintiff must have felt that there was great uncertainty in the law, and that our fondest expectations may be blasted suddenly. I had contended long and earnestly, once, before two justices of the peace who were sitting in a preliminary examination of a defendant charged with assault with intent to kill, that I had a legal right to ask a certain question of the prosecuting witness. The justices retired for consultation. On returning, the magistrate delivering the opinion of the court said: "We have decided that you may ask the question.' I was overjoyed. My heart softened toward the court, the sun split the clouds, and the dull November day brightened. I then asked the question, when the same magistrate arose and with owl-like gravity announced that they had also concluded that the witness need not answer it.

Referring to another case where the transactions between husband and wife are considered. It is held that when money was given by the wife to the husband, though no time of payment was named, if the circumstances should show that she regarded him as a debtor, then he had the right to prefer her to other creditors. The peculiarity in this case consisting in this: that outside of the closest confidential relationship no such statement of facts would arise. My

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memory fails to recall a single instance where business men ever transacted business on such a basis. There is also lacking in this case any evidence of possible knowledge other creditors could, or might have had, of this indebtedness.

Referring to another case where property was purchased with the money of the husband and the title taken in the wife's name, in payment of a preëxisting debt to her. In this case no accurate, in fact no book-account, was kept; no time of repayment named; no rate of interest fixed; no note taken at the time of the supposed loan as evidence of the debt; the whole transaction lacking in many respects the caution that any business man would take to preserve the evidence of his indebtedness. Yet when the husband became embarrassed and creditors were seeking payment, the claim was put in shape for payment, and paid by the husband deeding his property to her. It was suggested in the argument that no time of repayment was fixed. But the court says: "A loan on call or for an indefinite time is no curiosity in business circles." Nor is it — but was not the learned court begging the question, by assuming that this was given in a business way, when it lacked every element which could be called a business transaction? It was further argued that if a debt could be paid in this manner to the exclusion of creditors, it opened the door of fraud. That a husband might borrow from the wife, go into business, receive credit on the strength of his apparent property, live extravagantly, and then, when the pressure comes, pay his wife and let the other creditors go. This is answered by a statement that a man so disposed might do the same on capital borrowed from someone else. But is this a sufficient answer? What creditor other than the wife would be satisfied to sit by and see the property gradually melt away and take no steps to prevent it, or secure his debt? It is ignoring the common knowledge of business relations and business transactions to put it thus. These are sufficient to indicate the character of cases usually arising, and the application of the principles of law by the courts to them. That gross injustice is done the creditor, no one can deny. Now I find no fault with the abstract principles of the law. The fault rests in the application of the law to this class of cases.

Now let me cite some instructions usually given in such cases:

"In transactions between the husband and wife you must scrutinize closely, because these relations are such that opportunities are afforded to consummate fraud. But because this relation exists is no reason why they may not deal with each other as other persons do, and I so instruct you — that husband and wife may deal with each other in like manner and with like extent as strangers deal with each other." This is followed by the stereotyped instruction that fraud is never presumed, etc. The burden is upon him who asserts it, and the conclusion is drawn at once from the instruction, the manner of putting it, and the method followed in laying down the same, that the transaction between the husband and wife, though "shady," is within the instruction of the court, and a finding is made accordingly.

Some of these difficulties arise from other confidential relations. There is less difficulty in the proof of the fraudulent transaction, but it differs only in degree. The relation of parent and child, though one of trust and confidence, differs in character from that of husband and wife, and also in degree. The

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law surrounding the disposition of the property after the transfer from parent and child is also different, and the failure to consummate the full agreement between them might result in the total loss of the property by one or the other. In the former case, if the husband deed property to the wife, he shares it. If the parent deeds to the child, he may share it, or may not. The doubt arising or existing rendering cases of fraud on creditors from this source less frequent.

Now what suggestion of remedy is there, if any there need be, for the prevention of fraud through these relationships?

I would not abridge the rights conferred upon women by the statute except in one respect. Their ability to transact business is sufficiently shown by the successful issue of the cases referred to above. That they would be so successful with strangers, remains to be proved. But I would suggest—

First: That a law should be enacted requiring every woman at her marriage to file with the register of deeds a complete list of her property or her separate estate.

Second: That every business transaction involving a transfer of property or the creation of a debt between husband and wife should be in writing and recorded with the register of deeds in the county where such persons reside.

Third: That all debts between the husband and wife should be barred by the statute of limitations within a reasonable period, and that if the husband or wife failed to plead it that creditors might, or at best that it should be paid after all other creditors are satisfied whose claims are valid.

Another suggestion might be made, that the statute withhold the right of a married woman to trade or carry on business transactions with the husband.

Now the statute does not in words, nor do I think in effect, destroy the unity of the marriage relation. The right of husband and wife to trade with each other has been given by judicial construction. The wisdom of this may well be doubted. States having similar laws granting rights to married women hold that the unity of the marriage relation is not destroyed by the act, and the husband and wife are not permitted to trade with each other. If some of the suggestions should be adopted, there would, in my opinion, be less opportunity for fraud through this relationship, and as a consequent less fraud upon creditors.

THE NEED OF A CONSTITUTIONAL CONVENTION.

BY E. W. MOORE.

The use of written constitutions is a marked characteristic of the American republic. By this means in the States, as well as in the Federal scheme, the frame-work of government is established, and legislation is bounded and controlled. They are the great charters of the people to their representatives; the last expression of the people's sovereign will. Their importance has always been highly estimated. The making of a constitution is regarded by the Ameri-

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can people as their highest civil function. Even the perpetual strife of parties is to a great degree suspended, as the citizenship of a State approaches the formation of a new constitution. The presence of the ablest men of all parties is usually provided for in the manner of representation. The constitution of a State is expected to be, and should be, the expression of the soundest judgment and wisdom of its people. In the making of a constitution, society is resolved, as it were, into its original elements. It lays anew its foundations, in the light of its latest experience and accumulated wisdom. The new constitution fixes the landmark of its progress. Thenceforward its institutions are planted upon a new and higher plane as the people have progressed in understanding. Constitution-making is therefore an expressive feature of the political life of the American States, and marks the line of our continual progress. It should not occur too frequently, but a periodical recurrence to fundamental principles, and a reconstruction of the plan of government, is not only of greatest usefulness, but is essential to healthy political life. Once in every twenty-five years does not seem too often for the remodeling of a State constitution. This is almost the life of a generation, and in the rapid change in social and business conditions, even in the oldest States, the machinery will have to be reset. Provision should be made in the constitution itself for the calling of a constitutional convention at a stipulated period in the future. Legislatures to whose discretion the calling of such a convention is left are frequently at odds with the wishes and interests of the people, and partisan or other considerations are liable to affect their judgment and determine their action. Moreover, the mode of procedure for securing the assemblage of a convention is usually so tedious that serious ills are often long endured because of the hindrances in the way of reaching the remedy.

In order, therefore, to secure a constitutional convention at the proper time, provision should be made in the instrument itself, for the meeting of such a convention, without the intervention of the Legislature.

It is now thirty years since the present constitution of Kansas was adopted. Kansas was then a rudimentary community, newly organized on the western confines of population. The great interests which now concern its people were not then imagined. The defects of the present constitution, never a model of wisdom, have for years been painfully manifest. If the corrections and improvements made in it by a constitutional convention were confined to details, and consisted solely in putting the machinery of government into smoother running order, sufficient reason would be afforded for a new constitution. The methods adopted by the one hundred thousand settlers of thirty years ago fail in important respects to meet the demands, or accord with the judgment, of this generation. I mean to suggest in this paper only a few of the subjects which to my mind call for the consideration of a constitutional convention.

I. The greatest of modern governmental problems is the railway question. The railways have become so large and indispensable a part of social conditions, and so dominate the business life of every community, that they are at once necessary to its existence, and a menace to its prosperity. The power of railway corporations over every other interest has grown to enormous magnitude by

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the massing of their wealth and their forces. The geographical situation of Kansas with reference to the older established commercial centers has placed her at a disadvantage in the field of competition, and compelled her to bear burdens which do not belong to her. Her growth is retarded by unjust discriminations imposed upon her by the railroads, in order to meet their exigencies in other fields. All the interests of the State have suffered injury from this cause. It is her duty to take effective measures for self-protection. The question of how to cope with this power, and to command for the people the best benefits of railway service, without, on the other hand, doing injustice to the railroads, and crippling their ability to render such service, calls for care and thoughtfulness. If the means were devised, another query would be, how far to make the matter the subject of constitutional regulation, and to what extent to leave it to the action of the Legislature. Much, if not all, that may be needed in the way of railway control can be exercised by the Legislature under the present constitution. This, however, does not dispose of the question of constitutional provisions. The indisposition of Legislatures to act; their liability to the corrupting influences of the corporations themselves; and often their inefficiency, afford sufficient reasons for constitutional enactments.

II. The tendency of modern constitutions to forbid special legislation might profitably be relaxed with reference to municipal corporations. The government of large cities so as to secure good order, economy, and public benefits, is admitted to be one of the most serious problems of American civilization. In undertaking to solve the problem, we must lay down as a fundamental principle the axiom which underlies all our institutions, namely, that the best government which can be secured is the government of the people themselves. The chief element of strength of the American republic, the principle which makes it indestructible, and insures its perpetuity, consists in the distribution of the powers of government among small subdivisions of the people; thus enabling them to control as far as possible the affairs which immediately affect them. Good government in cities would unquestionably be promoted by permitting to them, in the largest measure possible, the powers of local government. Cities are more distinct as communities, both from each other and from rural districts, than the various States are from each other. In framing laws relating to cities, the first and most prominent fact to be considered is their points of difference, and their separate needs and conditions. It would be vastly easier to frame laws applicable to all the States of the Union, than to adapt general rules of legislation to half a dozen of its largest cities. The failure to appreciate this fact has been the cause of some of the most serious evils of municipal government. We must therefore adopt the theory to start with, that if cities cannot be trusted to govern themselves in all matters pertaining to purely local affairs, municipal government must be doomed to perpetual failure. Under the present constitution of Kansas no account is taken of the various circumstances and differing requirements of the cities. They are all subject to a series of cast-iron rules, which fail to provide a satisfactory government for any particular city in the State. They are placed upon a level with private corporations or individual citizens, without regard to the fact that they are as essentially and radically different from them

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as the State itself is. Each city should be permitted its own charter, with such special provisions as may be appropriate to its conditions, or as its citizens may desire. In many of the most progressive States, notably the State of New York, each city has a charter of its own, and can procure in the way of charter amendments such special legislation as it desires. In Missouri, every city of over one hundred thousand people may adopt a charter by popular vote. Under the constitution of Kansas the cities of the State are ill supplied with desirable legislation. The diverse interests of the various cities demand such different laws that it is next to impossible to meet by general legislation the demands of any.

III. The judicial system of Kansas needs revision. Delays and inconveniences in the administration of justice grow more serious year by year. The Supreme Court is in arrears about two years and a half, and many of the district courts are a year or two behind with their business. The final disposition of just claims may be delayed almost indefinitely by the skill of counsel. The aim should be to make judicial remedies as prompt as the nature of judicial proceedings will admit. The method of creating a commission to aid the court has been far from satisfactory, both in this State and in other States where it has been tried. Such a tribunal lacks the weight and dignity which belong to a regularly constituted court. It is also attended with friction and waste of labor. Several methods of providing for hearing appeals might be suggested. One method is by an increase in the number of judges in the present court. So far as the writing of opinions is concerned, a larger number of judges would perform a proportionately greater amount of work. At present a comparatively small proportion of the cases taken to the Supreme Court are presented with oral arguments. The time taken up in hearing oral arguments is much less than in many of the older States. So long as the present practice continues, the end desired could be fully accomplished by creating a sufficient number of judges. The only other plan which has been found feasible for relieving the Supreme Court is the creation of intermediate appellate courts. This could probably be done, however, under the present constitution.

Under the present constitution, according to the common acceptation of the clause relating to the district courts, a district court cannot have more than one judge, and where the demand of a county cannot be met by a single judge, the district court must be supplemented by other specially created courts. Provision should be made for the election of two or more judges of the district court where it may be necessary.

Pro tem. judges should be abolished. They derogate from the dignity of the courts, and cannot command for themselves or their judicial acts the consideration due to regularly organized courts. District judges should have the right to sit in courts other than their own when requested to do so on special occasions.

The term of office of judges should also be extended. A sense of responsibility to the people may be in some degree desirable. A judge should, on the other hand, have sufficient independence of popular favor to sustain him in the impartial discharge of the duties of his office. A term of only four years in length must keep him so constantly in the presence of a new election as to

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practically impair his independence and efficiency. A judge must necessarily, in the proper discharge of his duties, run counter, sometimes to a powerful popular sentiment, and sometimes to influential citizens or interests. He should be fearless in his disregard of every influence which tends to lead him from the strict administration of the law. To maintain himself in the face of such incidental hostility, he must command the confidence of the public in his honesty of purpose and determination. He should have a reasonable time in which to overcome the effects of such adverse conditions. In the older States these conditions are recognized. In New York the term of the *nisi prius* judges is eight years, and of the supreme judges fourteen years. In Pennsylvania the term of *nisi prius* judges is ten years, and of supreme judges twenty-one years. In most of the New England States the old custom of appointing the judges every year still prevails, but reappointments are so much a matter of course, without regard to party, that the term of office is practically for life. The term of the judicial office in Kansas is the shortest in the Union. It would also be better to hold the elections for judges in the spring, or at some time apart from the regular elections, and thus remove them, to a considerable extent, from the excitement of partisan politics.

IV. Another reform much needed is an extension of the term of office of State and county officers. The present short term of office, and the devotion by the officer of much of his time to the effort to secure a renomination by his party, impair seriously the value of his services to the public. This evil has been recognized in many of the States, and the terms of office have been lengthened, together with ineligibility to a succeeding term. There has of late been a marked tendency in the direction of longer terms of office as a method of reform. In Philadelphia the term of the mayor has recently been extended to five years. In St. Louis the period is now four years. The election of all officers should also take effect, as far as practicable, in the same year. Less frequent elections would improve political conditions, and benefit every social and business interest. The almost interminable agitation of the community by elections diverts attention from business and other important concerns; turns half of the people into politicians and office-seekers; breeds continual political strife, and thereby lowers the tone of politics, and impairs the usefulness of public officers.

V. The short period now provided for the session of the Legislature, which seems to so commend itself to the people of Kansas, seems to me to be productive of much more evil than good. If the Legislature could by some means or other be compelled to pass all the desirable laws first, and then be cut off before any bad ones could be passed, the short session might answer a good purpose. This seems to have been the theory upon which the constitution-makers proceeded, and it seems to have made a lasting impression upon the people of Kansas, notwithstanding the unvarying experience to the contrary. The fact has been that all of the bad legislation, all of the selfish schemes, and private interests, are first pressed forward to consideration. Probably almost all of the objectionable legislation which would be passed if the Legislature sat throughout the year is pushed through in the short period allotted. Perhaps some of the legislation most complained of might, if the session were longer, have been exposed, and

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prevented or modified. On the other hand, much legislation which would be of general public value has been crowded out. It is the good legislation, and not the bad, which is lost sight of in the rush of short terms. A review of the statutes of Kansas ought to convince anyone that the evident purpose of a short legislative session has not been served. In perhaps no State of the Union are the laws upon almost all subjects so carelessly drawn and so ill-considered, as well as seriously defective. The net result of thirty years' experience of short legislative sessions is a body of laws of inferior quality, and exceptional among the States in the number and variety of their defects. Manifestly, the panacea for bad legislation is not short sessions.

VI. The present constitution provides for the liability of stockholders of corporations to creditors in a sum equal to the par value of their stock. The usefulness of such a provision is doubtful. There are patent advantages and justice in it in the case of banking corporations, for the reason that such corporations are *quasi*-public institutions, and bear a fiduciary character toward their depositors. They cannot be hedged about with too much responsibility on the part of their stockholders and directors. But with respect to corporations organized for ordinary business purposes, the same reasons for protecting those who deal with them do not exist. It would tend to promote business enterprises and the investment of capital, if there were a means of putting at stake only the amount of money actually invested in the enterprise. It would be to the benefit of the State to thus encourage the use of capital in business ventures.

VII. Another provision in the present constitution which seems to be unjust, as well as without substantial reason, is that making judges ineligible for any other office during the period for which they are elected. It is generally understood to be a fact that this disqualification of judges was inserted in the constitution at the instance of a political leader for the purpose of getting out of his way a distinguished rival. There is certainly no good reason apparent why the election of any officer should deprive him, for a period, of substantial rights of citizenship. Experience has shown that this provision does not keep out of politics any judges who desire to participate in them. The bench of Kansas has at least not been freer than usual from the charge of political activity on the part of some of its members. Practically, the prohibition mentioned has little further effect than to debar a district judge from promotion to the supreme bench, and thus to shut out from the highest judicial office the class of men among whom the best candidates would ordinarily be found.

VIII. Another imperative demand is a change in the manner of impeachment of public officers. Under the present system, the question of removing an officer for offenses which render him unfit for public service can scarcely receive an impartial consideration. Party associations and party interests, as well as social influences, tend to control the determination of an issue which is in its nature purely judicial. The expense of the procedure is also a serious obstruction to its availability. Public interest requires a remedy for official delinquency, which is simple and practicable; and a mode of trial which will secure prompt and certain justice. All officers other than justices of the Su-

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preme Court should be subject to impeachment and trial before the Supreme Court upon charges duly preferred by a county attorney of any county in which the accused officer performs official duties; or, in case the county attorney fails to act, then upon the petition of a given number of citizens. It would be easy to so regulate the preferring of charges as to prevent wholly baseless accusations.

I have not in this paper designed to do more than call attention to a few leading subjects touching which a change in the present constitution is desirable. In numerous details its deficiencies will be manifest to anyone giving it a casual examination. For example, it is provided, by a most inapt expression, that probate judges shall be their own clerks. This is a matter of trivial detail, which would better be left to the action of the Legislature.

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CONSTITUTION AND BY-LAWS.

CONSTITUTION.

ARTICLE 1. The name of the Association shall be The Bar Association of the State of Kansas.

ART. 2. The object of the Association shall be the elevation of the standard of professional learning and integrity, so as to inspire the greatest degree of respect for the efforts and influence of the bar in the administration of justice, and also to cultivate fraternal relations among its members.

ART. 3. The officers of the Association shall be a President, Vice-President, Secretary, Treasurer, and an Executive Council of five members.

ART. 4. The President shall preside at all meetings of the Association, and shall open each annual meeting of the Association with an appropriate address. The Vice-President shall preside in the absence of the President; and in the absence of both, a president *pro tem.* may be elected by the meeting. The Secretary shall keep a record of all the proceedings of the Association, and conduct the correspondence of the Association.

ART. 5. The Treasurer shall keep an account of all funds of the Association. The Executive Council shall manage the affairs of the Association, subject to the constitution and by-laws.

ART. 6. A quorum for the transaction of business shall be twenty members.

ART. 7. No person shall be admitted to membership of this Association who is not a member of the bar of the Supreme Court, and who has not been engaged in the regular practice of the law for one year next preceding his application for admission.

ART. 8. All applications for membership shall be referred to the Executive Council, who shall report the same to the Association, with their recommendation thereon; and no person shall be admitted to membership except by a two-thirds vote of the members present. Each member shall pay an admission fee of five dollars, and annual dues of three dollars.

ART. 9. The annual meetings of the Association shall be held in January of each year, at the capital, at such time as the Executive Council fix. Thirty days' notice of the annual meeting shall be given by the Secretary. Special meetings may be called by the Executive Council, of which meetings thirty days' notice shall be given to the members by the Secretary.

BY-LAWS.

SECTION 1. The Executive Council shall, on or before the first day of May of each year, designate such number of members, not exceeding six, to prepare and deliver or read at the next annual meeting thereafter appropriate addresses

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or papers upon subjects chosen and assigned by the Council to each of said members, as may be so selected for such purpose.

SEC. 2. The order of exercises at each annual meeting shall be as follows:

1. Opening address by the President.
2. Consideration of applications for membership.
3. Reports of Secretary and Treasurer.
4. Report of Executive Council.
5. Reports of standing committees.
6. Reports of special committees.
7. Delivering and reading of addresses and papers.
8. Miscellaneous business.
9. Election of officers and delegates to American Bar Association.

SEC. 3. There shall be chosen by ballot, at each annual meeting, three members as delegates to American Bar Association for the ensuing year.

SEC. 4. All addresses delivered and papers read before the Association, the copy of which is furnished by the author, shall be lodged with the Secretary. The annual address of the President, the reports of committees, and all proceedings of the annual meeting, shall be printed; but no other address delivered or paper read shall be printed, except by order of the Executive Council.

SEC. 5. The terms of office of all officers elected at any annual meeting shall begin at the adjournment of such annual meeting, and end at the adjournment of the next annual meeting. And in case of any vacancy, the Executive Council shall appoint some member to fill the vacancy, who shall hold until his successor is elected.

SEC. 6. The Treasurer's accounts and report shall be examined annually by the Executive Council before their presentation to the Association, and the Executive Council shall report the result of such examination of the Treasurer's report and accounts to the Association at its annual meeting.

SEC. 7. The Executive Council shall cause to be printed such number of copies of the constitution and by-laws of this Association, with a roll of the members of the Association, as it shall deem best, not exceeding one thousand copies, and shall distribute the same to members of the Association, and to such other persons, or associations, or societies, as they may deem prudent; and shall, with the proceedings of each annual meeting, print a roll of the members of the Association.

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ROLL OF MEMBERS.

NAME.	ADDRESS.	ADMITTED.
Abbott, A. J.	Garden City	Jan. 8, 1890.
Ady, J. W.	Newton	June 4, 1884.
Alden, H. L.	Kansas City, Kas.	Jan. 13, 1885.
Alford, D. S.	Lawrence	June 6, 1883.
Allensworth, J. T.	Atchison	June 6, 1883.
Anderson, T. P.	Kansas City, Kas.	Jan. 8, 1889.
Angevine, C.	Mankato	June 6, 1883.
Austin, Edwin A.	Topeka	Jan. 13, 1886.
Austin, James H.	Kansas City, Mo.	Jan. 9, 1883.
Baker, Sperry	Paola	June 6, 1883.
Benson, A. W.	Ottawa	Jan. 9, 1883.
Benton, C. E.	Iola	Jan. 8, 1890.
Bergen, A.	Topeka	Jan. 11, 1887.
Bertram, E. S.	Council Grove	Jan. 11, 1887.
Bertram, G. W.	Oberlin	Jan. 13, 1885.
Bird, W. A. S.	Topeka	June 6, 1883.
Bland, W. T.	Atchison	Jan. 25, 1892.
Blue, R. W.	Pleasanton	June 6, 1883.
Bond, T. L.	Salina	Jan. 13, 1886.
Bowman, C. S.	Newton	Jan. 8, 1890.
Bradford, S. B.	Topeka	Jan. 3, 1888.
Brewer, David J	Leavenworth	Jan. 9, 1883.
Broderick, Case	Holton	Jan. 9, 1883.
Brown, Milton	Garden City	Jan. 8, 1890.
Buchan, W. J.	Kansas City, Kas.	Jan. 9, 1883.
Bucher, Charles	Newton	June 4, 1884.
Buck, J. Jay	Emporia	Jan. 11, 1887.
Call, Henry L.	Topeka	Jan. 8, 1889.
Campbell, A. B.	Topeka	Jan. 12, 1887.
Campbell, W. C.	Topeka	June 6, 1883.
Campbell, W. P.	Wichita	Jan. 9, 1883.
Case, George H.	Mankato	Jan. 9, 1883.
Chandler, George	Independence	Jan. 9, 1883.
Clarke, Fabius M.	New York City	June 6, 1883.
Clarke, W. B.	Kansas City, Mo.	Jan. 13, 1885.
Clogston, J. B.	Eureka	Jan. 13, 1885.
Cornell, George G.	Alma	Jan. 4, 1888.
Crozier, Robert	Leavenworth	Jan. 9, 1883.
Cunningham, E. W.	Emporia	Jan. 8, 1890.
Dassler, C. F. W.	Leavenworth	Jan. 8, 1889.
Day, John W.	Topeka	June 6, 1883.
Devenney, A. S.	Olathe	June 6, 1883.
Doster, Frank	Marion	Jan. 9, 1883.
Douglass, G. L.	Wichita	Jan. 8, 1890.
Douthitt, Wm. P.	Topeka	Jan. 13, 1885.

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ROLL OF MEMBERS—CONTINUED.

NAME.	ADDRESS.	ADMITTED.
Earle, Lucien	McPherson	Jan. 8, 1889.
Eaton, Robert M.	Atchison	Jan. 8, 1889.
Egan, J. G.	Topeka	Jan. 25, 1892.
Ellis, A. H.	Beloit	Jan. 8, 1889.
Emery, R. M.	Seneca	Jan. 8, 1889.
Everest, A. S.	Atchison	Jan. 9, 1883.
Falloon, James	Hiawatha	June 6, 1883.
Fenlon, Thomas P.	Leavenworth	Jan. 9, 1883.
Ferry, L. S.	Topeka	Jan. 25, 1892.
Foster, C. G.	Topeka	June 6, 1883.
Foster, F. H.	Topeka	Jan. 11, 1887.
Freeman, W. H. H.	Kansas City, Kas.	Nov. 28, 1883.
Freeman, Winfield	Kansas City, Kas.	Jan. 25, 1892.
Frith, J. Harvey	Emporia	Jan. 8, 1889.
Garver, T. F.	Salina	June 6, 1883.
Getty, George	Syracuse	Jan. 8, 1890.
Gillett, F. E.	Kingman	Jan. 13, 1885.
Gillpatrick, J. H.	Leavenworth	Jan. 9, 1883.
Glasse, W. B.	Oswego	Jan. 9, 1883.
Gleason, H. W.	Hutchinson	Jan. 20, 1891.
Gleed, C. S.	Topeka	Jan. 13, 1886.
Gleed, J. W.	Topeka	Jan. 8, 1889.
Godard, A. A.	Clay Center	Jan. 8, 1890.
Graves, Charles B.	Emporia	Jan. 9, 1883.
Green, George S.	Manhattan	Jan. 11, 1887.
Green, H. T.*	Leavenworth	June 6, 1883.
Green, J. W.	Lawrence	Jan. 9, 1883.
Griffin, Chas. T.*	Atchison	June 6, 1883.
Grattan, G. F.	McPherson	Jan. 25, 1892.
Guthrie, John	Topeka	June 6, 1883.
Guthrie, W. W.	Atchison	Feb. 3, 1885.
Guthrie, W. F.	Atchison	Jan. 25, 1892.
Hadley, D. B.	Kansas City, Kas.	Jan. 8, 1889.
Hagerman, James	Kansas City, Mo.	Jan. 13, 1886.
Hallowell, J. R.	Wichita	June 6, 1883.
Hamilton, A. L. L.	El Dorado	Jan. 8, 1890.
Harkness, F. P.	Clay Center	Jan. 8, 1889.
Harris, Amos*	Wichita	Jan. 9. 1883.
Harris, Vernon H.	Lawrence	Jan. 4, 1888.
Harrison, T. W.	Topeka	Jan. 3, 1888.
Haun, T. S.	Pittsburg	Jan. 8, 1889.
Hayden, Charles	Holton	June 6, 1883.
Hayden, Sydney	Holton	June 6, 1883.
Hayward, F. M.	Kansas City, Mo.	Jan. 13, 1886.
Hessin, John E.	Manhattan	Jan. 8, 1890.
Hick, R. S.	Westmoreland	Jan. 13, 1885.
Hogan, E. G.	Ravanna	Jan. 20, 1891.
Holt, Joel*	Beloit	Jan. 3, 1888.
Hopkins, Scott	Horton	Jan. 3, 1888.

* Deceased.

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ROLL OF MEMBERS—CONTINUED.

NAME.	ADDRESS.	ADMITTED.
Horton, Albert H	Topeka	Jan. 9, 1883.
Houk, L	Hutchinson	Jan. 9, 1883.
Hudson, T. J	Fredonia	June 6, 1883.
Humphrey, H. J.*	Hutchinson	Jan. 12, 1887.
Humphrey, James	Junction City	Jan. 9, 1883.
Hurd, T. A	Leavenworth	June 6, 1883.
Huron, G. A	Topeka	Jan. 8, 1890.
Hutchings, C. F	Kansas City, Kas	June 6, 1883.
Hutchinson, E	Marysville	Jan. 4, 1888.
Jetmore, A. B	Topeka	Jan. 11, 1887.
Jewett, E. B	Wichita	Jan. 8, 1889.
Johns, H. C	Larned	Jan. 8, 1890.
Johnson, J. B	Topeka	June 6, 1883.
Johnson, W. A	Garnett	June 6, 1883.
Johnson, J. G	Garnett	Feb. 3, 1885.
Johnston, W. A	Minneapolis	June 6, 1883.
Johnston, W. T	Paola	Jan. 13, 1886.
Jones, Howel	Topeka	Jan. 8, 1890.
Keeler, Henry	Topeka	Jan. 8, 1890.
Kellogg, L. B	Emporia	Jan. 13, 1885.
Kellogg, Mrs. J. M	Emporia	Jan. 8, 1889.
Kelso, David	Parsons	Jan. 13, 1885.
Kimball, C. H	Parsons	Jan. 11, 1887.
Kimble, Sam	Manhattan	Jan. 25, 1892.
Kingman, Samuel A	Topeka	Jan. 13, 1886.
Larimer, J. B	Topeka	Jan. 8, 1890.
Lawrence, S. S	Guthrie, O. T	Jan. 13, 1886.
Leland, Cyrus A	El Dorado	Jan. 9, 1883.
Lewis, C. C	Phillipsburg	Jan. 13, 1885.
Lewis, Ellis	Osage City	Jan. 9, 1883.
Little, E. C	Abilene	Jan. 8, 1890.
Little, G. F	Junction City	Jan. 8, 1890.
Littlefield, W	Topeka	Jan. 13, 1885.
Lloyd, Ira E	Ellsworth	Jan. 13, 1885.
Loomis, N. H	Topeka	Jan. 25, 1892.
Lovitt, R. A	Salina	Jan. 13, 1886.
Madden, Dennis	Cottonwood Falls	Jan. 8, 1890.
Mahan, John H	Abilene	Nov. 28, 1883.
Maltby, J. C	Minneapolis	Jan. 11, 1887.
Martin, David	Atchison	Jan. 9, 1883.
Martin, John	Topeka	Jan. 9, 1883.
Mason, Rankin	Topeka	Jan. 8, 1890.
May, A. R	Washington	June 6, 1883.
McBride, W. H	Osborne	Jan. 25, 1892.
McCammon, G. W	Valley Falls	Jan. 8, 1889.
McCleverty, J. D	Fort Scott	Jan. 9, 1883.
McClure, J. R	Junction City	June 6, 1883.
McFarland, E. A	Lincoln	Jan. 8, 1890.

* Deceased.

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ROLL OF MEMBERS — CONTINUED.

NAME.	ADDRESS.	ADMITTED.
McFarland, J. D.	Topeka	June 6, 1883.
McLean, H. A.	Marion	Jan. 12, 1887.
McMullen, J. F.	Winfield	Jan. 8, 1890.
Miller, O. L.	Kansas City, Kas.	Jan. 8, 1889.
Milliken, J. D.	McPherson	Jan. 11, 1887.
Mills, F. D.	Kansas City, Kas.	Jan. 13, 1886.
Monroe, Charles	Los Angeles	June 6, 1883.
Moore, H. Miles	Leavenworth	June 6, 1883.
Moore, Edwin White	Wichita	Jan. 25, 1892.
Nicholson, M. B.	Council Grove	Feb. 3, 1885.
Osborn, S. J.	Wakeeney	Jan. 8, 1890.
Overmyer, David	Topeka	Jan. 8, 1889.
Patchin, A. L.	Stockton	Jan. 9, 1883.
Patterson, W. J.	Lawrence	Jan. 13, 1886.
Peck, George R.	Topeka	Jan. 9, 1883.
Peckham, Chas. J.	Winfield	Jan. 11, 1887.
Perry, W. C	Fort Scott	June 6, 1883.
Porter, Silas W.	Kansas City, Kas.	Jan. 3, 1888.
Powell, Omar	Washington	Jan. 3, 1888.
Prescott, J. H. *	Salina	Jan. 9, 1883.
Price, Francis C.	Ashland	Jan. 25, 1892.
Quinton, A. B.	Topeka	Jan. 4, 1888.
Quinton, E. S.	Topeka	Jan. 4, 1888.
Radcliff, H. J.	Cottonwood Falls	Jan. 8, 1890.
Randolph, A. M. F.	Burlington	Jan. 25, 1892.
Redd, George S.	Ness City	Jan. 8, 1889.
Redden, A. L.	El Dorado	Jan. 13, 1885.
Reed, Isaac G.	Wellington	Feb. 3, 1885.
Riggs, S. A.	Lawrence	Jan. 13, 1886.
Rightmire, W. F.	Topeka	Jan. 8, 1890.
Roark, Wm. S.	Sharon Springs	Jan. 25, 1892.
Roberts, John W.	Hutchinson	Jan. 25, 1892.
Robinson, E. F.	Osborne	Jan. 8, 1890.
Robinson, R. G.	Holton	Jan. 11, 1887.
Rossington, W. H.	Topeka	Jan. 9, 1883.
Root, H. C.	Topeka	Jan. 8, 1889.
Scott, Henry W.	Larned	Jan. 8, 1889.
Scott, W. W. *	Emporia	Jan. 9, 1883.
Seabrook, S. L.	Topeka	Jan. 13, 1886.
Sedgwick, T. N.	Emporia	Jan. 8, 1889.
Seaver, B. A.	Troy	June 6, 1883.
Shafer, J. D.	Leavenworth	June 6, 1883.
Shartel, John W.	Winfield	Jan. 25, 1892.
Sheridan, John C.	Paola	Jan. 13, 1886.
Simpson, B. F.	Topeka	June 6, 1883.
Sluss, H. C.	Wichita	Jan. 9, 1883.

* Deceased.

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ROLL OF MEMBERS—CONCLUDED.

NAME.	ADDRESS.	ADMITTED.
Smith, C. B	Topeka	June 6, 1883.
Smith, Charles W	Stockton	Jan. 13, 1885.
Smith, Clark A	Cawker City	Jan. 9, 1883.
Smith, Wm. R	Atchison	Jan. 13, 1886.
Smith, W. W	Topeka	Jan. 13, 1885.
Snoddy, J. D	La Cygne	Jan. 9, 1883.
Spencer, Chas. F	Topeka	Jan. 4, 1888.
Spencer, James M	Topeka	Feb. 3, 1885.
Stackpole, Henry W	Clay Center	Jan. 20, 1891.
Stambaugh, W. S	Abilene	Jan. 20, 1891.
Stephens, N. T.*	Lawrence	Jan. 9, 1883.
Stevens, Hiram	Paola	Jan. 13, 1886.
Stillwell, L	Osage Mission	June 6, 1883.
Strang, J. C	Larned	Jan. 9, 1883.
Sturgis, F. W	Concordia	Jan. 9, 1883.
Summerfield, M	Lawrence	Jan. 4, 1888.
Sutherland, J. W	Neodesha	June 6, 1883.
Taylor, Irwin	Topeka	Jan. 13, 1886.
Thacher, S. O	Lawrence	Jan. 9, 1883.
Thompson, J. F	Sabetha	Jan. 25, 1892.
Thompson, L. H	Norton	Jan. 8, 1890.
Thompson, R. F	Minneapolis	Jan. 25, 1892.
Tillotson, D. C	Topeka	Jan. 8, 1889.
Tomlinson, J. C	Atchison	Jan. 13, 1886.
Troutman, J. A	Topeka	Jan. 12, 1887.
Valentine, D. M	Topeka	Jan. 9, 1883.
Vandeveer, G. A	Kansas City, Mo	Jan. 8, 1890.
Vandivert, S. W	Kinsley	Jan. 25, 1892.
Waggener, B. P	Atchison	June 6, 1883.
Wagstaff, W. R	Paola	Jan. 9, 1883.
Wall, T. B	Wichita	Jan. 8, 1890.
Walrond, Z. T	Muscogee, I. T	Jan. 11, 1887.
Ware, E. F	Fort Scott	June 6, 1883.
Waterbury, Ed. S	Emporia	Jan. 13, 1885.
Webb, L. J	Topeka	Jan. 4, 1888.
Webb, W. C	Topeka	Jan. 9, 1883.
Webb, W. D	Atchison	Jan. 13, 1885.
Webster, Chas. W	McPherson	Jan. 25, 1892.
Welch, R. B	Topeka	Jan. 8, 1890.
Wells, Abijah	Seneca	Jan. 8, 1889.
Wheat, L. B	Leavenworth	June 6, 1883.
White, J. M	Howard	June 6, 1883.
White, T. J	Kansas City, Kas	Jan. 20, 1891.
Whiteside, H	Hutchinson	Jan. 20, 1891.
Wilcockson, K. E	Oakley	Jan. 8, 1890.
Wilder, George C	Manhattan	June 6, 1883.
Winslow, C. S	Marion	Jan. 20, 1891.
Wolfe, Eugene	Topeka	Jan. 25, 1892.
Wood, O. J	Topeka	Jan. 25, 1892.

*Deceased.

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Tenth Annual Meeting

OF THE

BAR ASSOCIATION

OF THE

State of Kansas.

Held in the City of Topeka, January 31, 1893.

CRANE & CO., TOPEKA.

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TENTH ANNUAL MEETING

OF THE

BAR ASSOCIATION

OF THE

STATE OF KANSAS.

Held in the City of Topeka, January 31, 1893.

TOPEKA, KANSAS:
CRANE & COMPANY, PRINTERS.
1893.

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Officers for the Year 1893.

PRESIDENT,	JAMES HUMPHREY.
VICE-PRESIDENT,	H. L. ALDEN.
SECRETARY,	C. J. BROWN.
TREASURER,	HOWEL JONES.

Executive Council.

J. D. MILLIKEN, CHAIRMAN.

N. H. LOOMIS, SAM. KIMBLE,

A. H. ELLIS, H. W. GLEASON.

Delegates to American Bar Association.

A. L. WILLIAMS, M. B. NICHOLSON, A. J. ABBOTT.

Alternates.

F. L. WILLIAMS, T. A. HURD, C. B. GRAVES.

Delegates to National Bar Association.

R. M. EATON, W. A. S. BIRD, C. W. SMITH.

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Officers of Previous Years.

Officers for the Years 1883-4.

President.....ALBERT H. HORTON. | *Secretary*.....W. H. ROSSINGTON.
Vice-President..N. T. STEPHENS. | *Treasurer* .....D. M. VALENTINE.

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D. M. VALENTINE, *Chairman*, JAMES HUMPHREY, DAVID MARTIN,
J. H. GILLPATRICK, FRANK DOSTER.

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Vice-President..W. A. JOHNSTON. | *Treasurer* .....D. M. VALENTINE.

Executive Council.

D. M. VALENTINE, *Chairman*, JAMES HUMPHREY, DAVID MARTIN.
E. S. TORRANCE, L. HOUK.

Delegates to American Bar Association.

A. S. EVEREST, A. L. REDDEN, JAMES HUMPHREY.

Officers for the Year 1886.

President.....ALBERT H. HORTON. | *Secretary*.....JOHN W. DAY.
Vice-President..E. S. TORRANCE. | *Treasurer*.....D. M. VALENTINE.

Executive Council.

W. A. JOHNSTON, *Chairman*, JOHN GUTHRIE, A. W. BENSON,
M. B. NICHOLSON, JOHN H. MAHAN.

Delegates to American Bar Association.

DAVID J. BREWER, W. H. ROSSINGTON, FRED D. MILLS.

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Officers for the Year 1887.

President.....SOLON O. THACHER. | *Secretary*.....JOHN W. DAY.
Vice-President...HENRY C. SLUSS. | *Treasurer*.....D. M. VALENTINE.

Executive Council.

W. A. JOHNSTON, *Chairman*, C. B. GRAVES, ROBERT CROZIER,
GEORGE S. GREEN, T. F. GARVER.

Delegates to American Bar Association.

W. W. GUTHRIE, A. L. REDDEN, T. A. HUBD.

Officers for the Year 1888.

President.....W. A. JOHNSTON. | *Secretary*.....JOHN W. DAY.
Vice-President.....EUGENE F. WARE. | *Treasurer*.....D. M. VALENTINE.

Executive Council.

JOHN GUTHRIE, *Chairman*, S. B. BRADFORD, GEORGE J. BARKER,
J. W. ADY, J. H. MAHAN.

Delegates to American Bar Association.

SOLON O. THACHER, ALBERT H. HORTON, HENRY C. SLUSS.

Officers for the Year 1889.

President.....JOHN GUTHRIE. | *Secretary*.....CHAS. S. GLEED.
Vice-President.....T. F. GARVER. | *Treasurer*.....D. M. VALENTINE.

Executive Council.

B. F. SIMPSON, *Chairman*, W. W. SCOTT, L. B. KELLOGG,
A. W. BENSON, CHAS. S. HAYDEN.

Delegates to American Bar Association.

J. W. GREEN, J. H. GILLPATRICK, CHARLES MONROE.

Delegates to National Bar Association.

ROBERT CROZIER, M. B. NICHOLSON, ROBERT M. EATON,
GEO. S. GREEN, H. L. ALDEN, J. W. ADY.

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Officers for the Year 1890.

President .....ROBERT CROZIER. | *Secretary*.....C. J. BROWN.
Vice-President .....CHAS. B. GRAVES. | *Treasurer*.....HOWEL JONES.

Executive Council.

B. F. SIMPSON, *Chairman*, JOHN GUTHRIE, CASE BRODERICK,
W. W. SCOTT, R. M. EATON.

Delegates to American Bar Association.

GEORGE S. GREEN, L. B. KELLOGG, W. C. PERRY.

Delegates to National Bar Association.

W. A. JOHNSTON, B. P. WAGGENER, A. H. ELLIS,
J. W. GLEED, G. F. LITTLE, J. F. MCMULLEN.

Officers for the Year 1891.

President.....D. M. VALENTINE. | *Secretary*.....C. J. BROWN.
Vice-President.....L. HOUK. | *Treasurer*.....HOWEL JONES.

Executive Council.

T. F. GARVER, *Chairman*, E. W. CUNNINGHAM, M. B. NICHOLSON,
J. R. MCCLURE, W. P. DOUTHITT.

Delegates to American Bar Association.

T. F. GARVER, B. P. WAGGENER, J. H. GILLPATRICK.

Delegates to National Bar Association.

W. A. JOHNSTON, A. H. ELLIS, G. F. LITTLE,
ROBERT CROZIER, J. W. GLEED, J. F. MCMULLEN.

Officers for the Year 1892.

President.....T. F. GARVER. | *Secretary*.....C. J. BROWN.
Vice-President.....J. W. GREEN. | *Treasurer*.....HOWEL JONES.

Executive Council.

W. C. WEBB, *Chairman*, C. ANGEVINE, E. W. MOORE,
WINFIELD FREEMAN, A. A. HARRIS.

Delegates to American Bar Association.

JAMES HUMPHREY, F. P. HARKNESS, J. D. MILLIKEN.

Delegates to National Bar Association.

T. N. SEDGWICK, DAVID OVERMYER, S. W. VANDIVERT.

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Minutes of Tenth Annual Meeting.

TOPEKA, KANSAS, January 31, 1893.

The tenth annual meeting of the Bar Association of the State of Kansas was called to order at 4 o'clock P. M., in the Supreme Court room, with the President, T. F. Garver, in the chair.

The reading of the minutes of the last meeting was dispensed with.

On motion of J. R. McClure, the following committee was appointed to examine and report upon applications for membership, the Executive Council being absent: J. R. McClure, C. W. Smith, and Rankin Mason.

The Treasurer presented his report of receipts and disbursements of the past year; and on motion of T. J. White, the report was referred to the following committee: T. J. White, Lucien Earle, and M. B. Nicholson.

The committee on application for membership reported the names of the following-named lawyers, and recommended their election as members of the Association: A. L. Williams, C. F. Mead, F. L. Williams, C. C. Coleman, and F. L. Martin. The report was adopted.

The annual address of the President was delivered by T. F. Garver.

The special committee on legislation to regulate and control admissions to the bar, through its chairman, W. F. Guthrie, presented its written report.

J. D. Milliken, delegate to American Bar Association, gave an interesting oral report of the proceedings of the last meeting of that Association.

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On motion of E. W. Cunningham, the following committee was appointed to nominate to the Association officers for the coming year: E. W. Cunningham, James Humphrey, A. J. Abbott, Lucien Earle, and N. H. Loomis.

The Association adjourned till 7:30 P. M., at which hour it reconvened in the Supreme Court room.

JANUARY 31 — EVENING SESSION.

E. F. Robinson delivered an address on the subject, "If Not, Why Not?"

J. D. Milliken delivered an address on "The Treatment of Crime."

The committee to whom was referred the report of the Treasurer reported that they had found the same correct, and recommended its adoption — showing balance on hand to be $286.88. The report of the Treasurer was adopted.

On motion, the following committee was appointed to investigate the work being done by the law department of the State University, and to report to the next meeting of the Association the result of such investigation: F. L. Martin, Geo. S. Green, and J. W. Roberts.

On motion, the following committee was appointed to secure uniformity and needed reform in admissions to the bar: J. W. Green, E. W. Cunningham, M. B. Nicholson, Frank Doster, James Humphrey, Rankin Mason, and Sam Kimble.

On motion of E. F. Robinson, the following special memorial committee was appointed to prepare and present suitable resolutions on the death of Joel Holt: A. H. Horton, D. M. Valentine, and W. A. Johnston.

The committee on nomination of officers for the ensuing year reported as follows:

For President — James Humphrey.

For Vice-President — J. W. Green.

For Treasurer — Howel Jones.

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For Secretary—C. J. Brown.

For Executive Council—J. D. Milliken, N. H. Loomis, Sam Kimble, A. H. Ellis, and H. W. Gleason.

For Delegates to the American Bar Association—A. L. Williams, M. B. Nicholson, and A. J. Abbott. *Alternates:* T. A. Hurd, C. B. Graves, and F. L. Williams.

For Delegates to the National Bar Association—R. M. Eaton, W. A. S. Bird, and C. W. Smith.

These nominations were unanimously ratified by the Association.

The following standing and special committees were appointed by the President, James Humphrey:

Judiciary Committee—W. H. Rossington, C. F. Mead, F. W. Sturgis, M. Summerfield, and T. W. Wall.

Committee on Amendments to Laws—David Overmyer, A. W. Benson, J. W. Ady, J. Jay Buck, and J. B. Johnson.

Memorial Committee—L. B. Kellogg, David Kelso, and Henry Keeler.

Special Committee on Uniformity of State Laws—S. O. Thacher, Milton Brown, D. M. Valentine, W. C. Webb, and George L. Douglass.

The addresses delivered before the Association at this meeting, including the formal report of the committee on "Legislation to Control and Regulate Admissions to the Bar," appear in the following pages.

Adjourned.

C. J. BROWN, *Secretary.*

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Addresses.

UNIFORMITY OF STATE LAWS.

BY T. F. GARVER, PRESIDENT.

Gentlemen of the State Bar Association: Looking over the field of jurisprudence, we find many things which seem to maintain their places for no better reason than the conservatism of the bar, and the readiness with which we observe the old maxim which adjures us to stand in the ancient ways. We fully appreciate the uncertainties of the law; gathering years only make it more painfully evident that life is far too short to enable the most diligent to acquire a perfect knowledge of the rules which regulate and govern civil conduct. Happily, the lawyer may profit something from that general presumption, however violent in practice, that everyone is presumed to know the law. At the same time he must needs be searching through almost numberless volumes, trying to get knowledge, and after but half satisfactory research he must often content himself with a guess, which has not the recommendation of being as infallible as the equally honest and laborious guess of a court of last resort.

For centuries the bench and the bar have been engaged in this contest with the uncertainties of law. Only in recent years has any serious attempt been made to depart from old ways, and to adopt some system which might give greater certainty and stability in jurisprudence. Codes of procedure and general codification of law have done much in the several States, and greater advancement will in the near future be made in this direction. It is a change that matures only by a slow growth. The longer the busy lawyer has been in practice, grounding himself in legal principles and familiarizing himself with precedents, the more unwilling he seems to be to attempt any legal reforms. All disadvantages and difficulties are encountered with the same fortitude that the devout Moslem exercises as he, footsore and weary, seeks his sacred Mecca.

Confined within our own State boundaries, and looking only to our own State laws for guides to action, we are perplexed and bewildered as we seek the light which will not mislead. But what can be said of our national system, which to-day as never before affects all our people? The means of communication between the different and even distant parts of the country have become so accelerated and effective, and the business interests of the country have become so diffused and intermingled, that we are rapidly becoming cosmopolitan

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in thought and action. In the business world State lines are well-nigh obliterated, and distance, through the fast mails, the telegraph, and the telephone, has been practically annihilated. The merchants of Chicago, St. Louis and New York jostle each other as though they were together on Broadway eagerly striving for advantage. What we as students, with half-awakened interest, read of as the conflict of laws between States and countries, and which in the earlier years we met in practice as exceptional cases, is to-day a living reality with business men and lawyers, meeting them at every turn.

We are a great people. Active, restless, jealous of personal and State rights, ambitious to excel, and not averse to self-glorification. As a nation, we present a peculiar condition in respect to our laws. What we understand as national legislation has little to do with the people in their business or domestic relations. It is comparatively seldom that the lawyer is called upon for advice or services in the adjustment of civil rights which are governed or affected by Federal statutes. As a rule, in the affairs of the people, and regulative of their conduct toward each other, the State is exclusive and supreme. But the vast diversity and conflict in this State regulation scarcely attracts our attention. When we speak of France, England, Mexico, or other countries, we think of their people as being governed by laws which are uniform and operative throughout the whole country. Should we find it to be the fact, in passing through one of these countries, that every few hours we passed an imaginary line separating people of the same language, like attainments, and common nationality, yet that one law governed on one side of the line and an entirely different law obtained on the other side, with reference to quite similar transactions and conditions, we would be impressed with the unreasonableness and inconvenience, if not the absurdity, of such a state of things. The same people, like conditions and similar wants, ought to justify, if not demand, like rules of conduct in respect to those matters and conditions which are not local either in influence or relation.

During the last few years in this country interstate trade and traffic, and interstate interests of all kinds, have been increasing in wonderful degree, and such intercourse will increase with faster stride in the future. Why should the business man and the lawyer be continually meeting with the annoying perplexities which arise from the utter lack of uniformity in State laws? Not only are the business interests of the people affected, but the whole moral life is more or less contaminated.

Marriage and divorce, rights of married women, descents and distributions of property, execution of wills and deeds of conveyance of title to real estate, insolvency, official certificates, and other like subjects, might and ought to be treated with some degree of uniformity in all the States. The first mentioned of these subjects, marriage and divorce, is weighty with interest to the people of every civilized country. It affects the home life, and through it the State. The marriage relation is one of the most sacred nature, and, in every aspect, when viewed as a mere civil compact, no valid reason can be given why the laws governing it should not be uniform. No such absurdity should long be

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tolerated in civilized and Christian communities as that a man is in a married state in one part of the country, and a single man in another. When a decree of full divorcement is granted in one State for legal cause, that should operate and be respected in every other State. So, too, persons who, because of blood relationship, or other cause, are forbidden to marry in one jurisdiction, should not be permitted to evade the law of their domicile by temporarily stepping across the line to have the ceremony performed, and then return, in defiance of the laws to which they owe obedience. The statutes of this State, for sufficient reasons, provide that persons divorced shall not re-marry within six months after the time when the decree of divorce is granted. The Missouri magistrate unhesitatingly officiates at the ceremony where the Kansas divorcee appears with a copy of the decree of the court, on which the ink has not dried, and orange blossoms and new matrimonial vows are strangely mixed up with discarded husbands and deserted homes. Scandals grow and multiply, and communities are as helpless as are those from disease who live on an island surrounded by malarial swamps.

These incongruities and hurtful practices are almost ludicrous in some cases. Ordinarily, we assume that when a decree of divorce is granted, the relation of husband and wife no longer exists. Under the laws of New York, a man may be wifeless by reason of a judgment for divorce having been given against him, and yet be guilty of bigamy if he re-marry in that State. Thus, in *People vs. Faber*, 92 New York, 146, the defendant was convicted of bigamy under the New York statute, though a divorce had been regularly decreed against him at the suit of the first wife. There is a grim sort of justice at the basis of the New York statute, which provides that the plaintiff in whose favor a divorce is granted may re-marry, but that the defendant shall not as long as the plaintiff lives. It is, however, a straining of the situation to require a man to recognize as his wife, for any purpose, one who is lawfully consorting and cohabiting with another man. In adjoining States no such law of enforced celibacy exists, so that a knowledge of the New York rule, and a ferry-boat ticket, are all that is required to furnish an easy evasion of such statute; and the Court of Appeals of that State holds that a person who is under this ban against re-marrying can safely pick up his intended spouse, cross over into another State where no such law exists, have the ceremony performed, and return a legally re-married man to claim the protection of the laws of the State he has thus indirectly violated. (*Van Vooris v. Brintnall*, 86 N. Y. 18.)

Similar transactions are familiar to us under similar or other provisions of the divorce laws of this State, wherein our laws are made fruitless and boldly evaded by reason of the existence of statutes in adjoining States not in harmony with ours. We see and admit the inability of the State to effectively regulate and control its own internal affairs, but pass it by as something needless, or impossible to be remedied.

What lawyer, except after a course of special study and investigation, would assume to give an opinion as to the rights and powers of a married woman in any other State than his own? How far can she do business for herself and

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enjoy the control and use of her own earnings and property? What kind of contract is binding upon her, and how must it be executed? Such queries are not novel. In Ohio a married woman seems to be vested fully with all civil rights to the same extent as if she were a man, or were unmarried. There is apparently no room for exception or limitation.

Illinois endows women quite liberally with property and other civil rights and privileges, including the privilege of being sued; but a married woman cannot enter into any partnership business without the assent of her husband. She attains her majority at the age of eighteen.

Indiana is not so confiding in the ability of women to take care of themselves. They do not attain their majority until twenty-one years of age, and have not general power to contract after marriage. Her separate property rights are preserved, and she is given power to contract with reference thereto, except in the case of her real estate, when she can act only with her husband's consent. Neither can she make a valid contract of suretyship for another.

Michigan greatly enlarges the common-law rights and powers of married women, but we find in that State many restrictions upon their legal power to contract as compared with a married man or a *femme sole*.

So we may go over the laws of the various States, and, while we find much similarity in the recent legislation on behalf of married women, we also discover many distinctions and differences which often very seriously affect contracts entered into by them. A married woman in Kansas owns real estate in another State where the law as to the conveyance of such property is materially different from our law upon such subjects: a question of perplexity and annoyance is at once presented to the parties, which requires care and study to properly dispose of. Why in matters of business and ownership of property should there be any material difference between the rights of married women of Illinois and Indiana, or between those of Nebraska, Kansas, Iowa, and Michigan? What is there in climate, social conditions, education, moral attainments, or other things, that should make any disparity between the people of these States as to contractile age, or power?

The law of the place where a contract is entered into usually governs when the validity of the contract is questioned.. As to real estate it is often otherwise, for then the *lex situs* must be looked to; but in either class of contracts we must often necessarily look beyond our own jurisdictions.

Another prolific subject of difference is found in the laws as to descents and distributions of property. If a citizen of Kansas dies, leaving real estate in different States, the question arises, Who are his heirs, and how do they take? If the land is situated in one State, the widow may have a mere dower interest; if in another, she may inherit all, and again in another, she may be far down the line and not in the list of those who are supposed to be entitled to first and chief consideration in the disposal of the property of an intestate. In Kansas, the widow and children have the estate equally divided between them. If no children, the widow takes all. Should the land be in Missouri, the widow would have a dower interest, but no absolute estate if there be children, parents,

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brothers, or sisters. In that State parents, brothers and sisters take in equal parts, without any preference or priority, but all before the widow. Illinois is more mindful of the widow and surviving husband, and her laws would give to the survivor of them, in the absence of children, then to parents, brothers and sisters, who share together equally. But in no case can the widow or husband take more than one-half, if there are any kin to whom it may descend.

Pennsylvania would allow the widow nothing absolutely. Her dower right is the extent of her claims, the estate itself going to children, parents, brothers and sisters, and next of kin to remotest degree, to her exclusion.

New York and New Jersey would make disposition somewhat after the manner of Pennsylvania.

Michigan would prescribe a rule quite different in some particulars.

If there are no children, or lineal descendants, Wisconsin would give all to the surviving husband or widow, but not otherwise.

Should an intestate's estate include real estate situated in these several States, there would be as many different rules of inheritance to apply as there are States, and the several classes of heirs would change places in order of priority as often as State lines were crossed. How is it, too, if such an one should prefer not to die intestate, and desired to execute a will devising his various tracts of land. By what law must he be governed? If the laws of the several States control as to the land situated within them, what kind of conglomerate document would be sufficient to be a valid and effective will in all places? How should even an ordinary deed of conveyance be executed in order to work a transfer of the title? Who is capable of making a valid will or deed to effect a disposition of real estate? Who is of contractile age? Thus we might continue the inquiry as to the various phases which these things present to us, only increasing our bewilderment as to what the correct rule in any certain case is, and our amazement at the versatility of legislative genius which evolves such a diversity of results from practically the same causes.

No one can have a proper comprehension of these things without appreciating the disadvantages, in many ways, which they force upon us. Then we aspire to that certainty in the law which springs from uniformity, and thus would avoid being affected by causes which arise as from ambuscades.

The acts and contracts of men must be judged in the light of surrounding circumstances. The law enters into and forms a part of every transaction; but to the common mind it is the law of the place where the parties are. The trouble breaks upon us when we find that other jurisdictions have control of our contracts and transactions, and that they are measured by rules quite at variance with those we assumed would be effective. Few lawyers are safe counselors in matters affected by the laws of other States than the one in which they practice. Opinions are liable to be erroneous by reason of the influence of local constructions, or the overlooking of statutory or judicial modifications of common-law principles. The ordinary man of business, however familiar with the laws of his own State, feels the necessity of retaining new attorneys and legal advisers with every change of State jurisdiction. Thus are sought to be avoided

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the mistakes and injurious consequences that follow the overlooking of differences in the laws of different places. Could this be avoided by the establishing of substantial uniformity in the law on such subjects as have been mentioned, a great advantage would be gained not only in the interest of the bar, but in the furtherance of every business enterprise. The great value of such uniformity was never so apparent as now. State boundaries no longer mark the limits of business transactions, nor do they offer any impediment to the ownership of property. The active man of business is here to-day, and to-morrow engages in large undertakings in neighboring States. All natural conditions are the same, but there is the constant change of legal restriction and regulation, which often steps in to defeat the honestly formed designs of the parties.

Pride in State sovereignty, and unreasonable adherence to the legal precedents established in our State, should not hinder us from modifying our rules of action and of property so as to substantially conform to those equally good of a sister State. And in all those matters which can justly have no mere local coloring, there should be concession and compromise for the attainment of the best of the kind with uniformity.

Admitting that these ends are desirable of attainment, the question remains, How shall such uniformity be brought about? Desirable as it may be to have something in common between the States in the law regulating many matters of general public concern, the difficulty of a solution of the problem is very apparent. State legislatures are, as a rule, strongly impressed with the idea that they are brought into being for the purpose of doing something, and it is often of greater concern to the novitiate that he act than that he act wisely and well. How long would uniformity continue even if once established? It might be like some of the utopian dreams we hear of, when all men shall be legislated into conditions of prosperity and happiness. Keeping them there is more difficult even than to get them there.

This objection, however, does not very seriously lie with reference to a considerable number of subjects which are regulated by laws of a comparatively permanent character. We observe this to be the case as to the rights of married women, marriage and divorce, wills, conveyances of real estate, descents and distributions, and other like subjects, wherein there has been very little amendatory legislation. The ordinary field for the average legislator is prolific in simpler and equally satisfying subjects. The experience of this State is the experience of other States. Hence, we may assume that if uniformity could be attained, the benefits derived would be sufficient to deter change by trivial and unimportant amendments.

It is only in the last few years that any serious effort has been made to bring about uniformity in the laws of the several States. Until then, the disadvantages and hurtful influences of disparity and conflict have been felt and endured as stoically as though they were the inevitable results of unchangeable causes. The conservatism of the bar has often stood as an apparently insurmountable barrier between the laws of the country and evils in the system to be remedied. The press has made an occasional complaint, but without intel-

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ligent suggestion of plans for relief. A new era seems to be dawning, and, no doubt, we shall ere long fully appreciate this fruitful field of legal reform.

What has thus far been done is due largely to the American Bar Association, which has been agitating the question and urging its consideration by the members of the bar in the several States. The effort is to secure action from the State Legislatures, and to induce each State to unite with the others in an agreement as to what the law should be on these matters of common interest, and to so enact it.

The first State, I believe, to take action, was New York, which has led in so many useful legal reforms. The Legislature of that State passed an act which was approved by the Governor April 28, 1890, entitled "An act to provide for the appointment of commissioners for the promotion of uniformity of legislation in the United States." The act provides for the appointment of three commissioners for purposes designated as follows: "Who are hereby constituted a board of commissioners by the name and style of Commissioners for the Promotion of Uniformity of Legislation in the United States. It shall be the duty of said board to examine the subjects of marriage and divorce, insolvency, the form of notarial certificates, and other subjects; to ascertain the best means to effect an assimilation and uniformity in the laws of the States, and especially to consider whether it would be wise and practicable for the State of New York to invite the other States of the Union to send representatives to a convention to draft uniform laws to be submitted for the approval and adoption of the several States, and to advise and recommend such other course of action as shall accomplish the purposes of this act."

Following the example thus set by the Empire State, other States have been falling into line, until at this time we find that acts providing for the appointment of such commissions have been adopted in Maine, New Hampshire, Massachusetts, Pennsylvania, New Jersey, Delaware, Ohio, Minnesota, Michigan, and perhaps others. The importance of the successful issue of this movement impresses itself upon the public mind as the subject becomes better understood. The practicability of effecting uniformity in the manner suggested is easily conceded; and the number of the subjects that may be brought within such regulation increases with the consideration of the question. The later acts having this in view materially enlarge upon the subjects expressed for consideration in the New York act, and show how fruitful for reform is this hitherto untouched field.

The Legislature of Michigan took action in June, 1891, providing for the appointment of three commissioners whose duty it shall be "To examine the subjects of marriage and divorce, insolvency, forms of notarial certificates, execution and acknowledgment of deeds, execution and probate of wills, descent and distribution of property, and other subjects; to ascertain the best means to effect an assimilation and uniformity in the laws of the States, and for that purpose, in their discretion, to meet representatives of other States in convention, to draft uniform laws for submission and adoption by the several States, and to advise

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and recommend such other course of action as shall best accomplish the purpose of this resolution."

Uniformity of State legislation is feasible only through concerted action of the several States. The prejudices and jealousies begotten by an unreasonable observance of mere State boundaries must give place to that enlarged patriotic view which embraces the citizens of the United States and beholds them banded together in a common brotherhood. The mere individuality of the States as political organizations is of far less importance than the general good of all our people. In its report to the American Bar Association in 1891, the committee on this subject said: "A State which unites with other States in framing such general and uniform laws in matters affecting the common interests of all estates, and in the spirit of mutual compromise, through mutual commissions and investigations, yields, in so doing, nothing whatever of its State sovereignty. On the contrary, the proposed method of voluntary State action takes from the General Government any excuse for absorbing powers now confined to the States, and therefore directly tends to preserve intact the independence of the States. It is equally obvious that all the subjects on which it is now proposed to obtain more unity and harmony are in no sense matters of mere local significance or convenience. Facility of intercourse, freedom of trade, certainty in contracts, purity of morals, the preservation of the family, furtherance of justice — these are not the things that detract from the dignity, power, and true independence of any State. They are needed no less in one State than in another. They are, or should be, above and beyond the accident of mere locality."

To some extent it has been urged that the only feasible plan to secure uniformity of law on these subjects, and especially in the law regarding marriage and divorce, is by Federal legislation. Permanency of uniformity would in that way be secured; but there are so many obstacles in the way of accomplishing anything in that direction that it is not at present a fruitful line of discussion. The States are loth to surrender to the central government any control over what are regarded as domestic interests; and of course nothing could be done except through an amendment to the constitution of the United States, vesting such authority in the Federal Congress. In time this may be thus regulated as we rise in our individual esteem of American citizenship, and are less jealous of the supposed inalienable prerogatives of the State. However it shall be brought about, this reform will be forced upon us by the practical business spirit of the age. It is a reform that should be advocated by the bar of this State, as it is by the lawyers of other States, and needed legislation should be secured that would place us in line for its attainment. Kansas has the activity to at least follow a lead in wise reform, and here is one for which it can be truthfully said, it will be in the interest of all the people.

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THE TREATMENT OF CRIME.

BY JOHN D. MILLIKEN.

Mr. President, and Brothers of the State Bar Association: Criminality is as old as humanity. From the time our first parents were expelled from Eden's lovely shades, to the present hour, infractions of law have been subjects which humanity has been compelled to deal with whether it would or not. In its far-reaching effects it touches every one directly or indirectly.

"It confronts us alike in crowded cities and on lonely prairies, in peaceful villages and on stormy oceans, and when we seek the privacy of our chamber it passes with us across the threshold."

The legal profession, having its sphere of action in the very center of the busiest and intensest activities of life, where the greatest ambitions, the strongest prejudices, the most violent passions, the fiercest struggles of mankind are involved, getting full views of the innermost workings of the human heart, where others as a rule get glimpses, feeling the throb of the great pulse of humanity, ought to know, as no others can, the primal forces which operate upon men, and impel them by a mystic and seemingly uncontrollable and irresistible force to commit crimes against the laws which, in fiction if not in fact, are enacted for their well-being.

A lawyer is a seeker after truth, and ought to be, and when his mind is not perverted, I believe he is, the broadest, fairest, most conservative, reasonable, tolerant and humane of all men. Yet his life is intensely realistic and practical. By force of his environments he becomes a follower rather than a leader of public opinion in the law; he executes, but does not create; he enforces, but does not enact. These conditions hinder and prevent him from utilizing his knowledge and powers to their fullest extent.

As a rule the most eminent members of the profession give little or no attention to the practice of criminal law and treatment of criminals, and yet it is deserving, and demands the most profound thought, conscientious and charitable consideration of the ablest minds.

I can therefore think of no subject more appropriate to press upon this body, or of anything that will be productive of more good to the people of our State, than to awaken an interest in the proper treatment of our erring brethren.

It will not do to draw our pharisaical cloaks closer around us and thank God that we are not as other men are, for no matter how depraved and steeped in crime one becomes, he is still endowed with the same powers, *and no others*, that you and I are, and we should ever bear in mind the admonition, "Let him that standeth take heed lest he fall." We are our "brother's keeper." We *cannot* avoid our responsibility if we *would*. Neither can we relegate this subject to the realm of the pulpit, and say it is a question of morality or religion

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with which we have nothing to do, for as that eminent jurist, Judge Dillon, recently said: "It is considerations of justice and right that make up the web and woof and form the staple of a lawyer's life and vocation." "The lawyer's work and business is, it is true, with human laws, but the lawyer makes a sad mistake who supposes law to be the mere equivalent of written enactments or judicial decisions." "Theoretically, and for many reasons practically, we must discriminate between law and morality, and define their respective provinces." But these provinces always adjoin each other, and ethical considerations can no more be excluded from the domain of the law *in its every part* than can one exclude the vital air from his room and live.

Crimes are committed by members of all classes of society, yet no class is wholly criminal.

The indubitable right to punish offenders against the peace and laws of society has ever been universally recognized, and has been justified upon many grounds, varying from the lowest spirit of savage revenge to the highest type of Christian philanthropy. It is not my purpose to inveigh against this right, but to call attention to some of the incentives and motives actuating us, and to inquire if they are the loftiest and noblest, and wholly in harmony with the spirit of the age.

In former times the sole object of punishment was revenge. The Mosaic law provided that "if an ox gore a man or woman that they die, then the ox shall be surely stoned, and his flesh shall not be eaten; but the owner of the ox shall be quit."

Among the Kuki of Asia, if a tree fall upon a man and kill him, his friends chop it to pieces and scatter it abroad; and if a tiger kills one of their number, his family are in disgrace until they retaliate by killing and eating this or another tiger.

Some of the spirit of the Kuki has apparently been transmitted to us, as is illustrated by such acts as involuntarily kicking a door that pinches our finger; or if, in passing through the forest, a twig strikes us in the eye, smarting under the pain we automatically and angrily raise our club and strike the branch as though it were to blame and we were in duty bound to retaliate.

The twelve tables of Rome provided that if an animal did damage, it was to be surrendered, or the damage paid for.

Under the Grecian law, if a dog bit a man the dog was delivered up and bound to a log four cubits long. If a slave killed a man, he was delivered to the relatives of the deceased; if he wounded a man, he was given to the wounded man to do with as he pleased.

It is asserted that even in the second century of the Christian era they sat in judgment upon inanimate things in the Prytaneum, the very seat of Grecian justice and center of legal learning, where the laws of Solon were deposited.

A celebrated statesman, Aschines, in one of his speeches said: "We banish beyond our borders stocks and stones, and steel, voiceless and mindless things, if they chance to kill a man, and if a man commits suicide we bury the hand that struck the blow afar from the body."

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Until very recently in England, criminal pleading in indictments for homicide required that the value of the instrument causing death should be set forth, that the King might claim forfeiture of the deodand as "an accursed thing," as Blackstone calls it. It is stated on good authority that so recent has been the exercise of this doctrine that a steam-engine has been forfeited in England. The large number of capital cases, amounting to over two hundred in England even since the dawn of the nineteenth century, and the many other cruel punishments there imposed, all bear witness to the vengeful spirit which was dominant, and which the conviction of crime afforded a pretext to gratify.

O. W. Holmes jr., in his most excellent treatise on "Common Law," says that "It certainly may be argued with some force that it has never ceased to be one object of punishment to satisfy the desire for vengeance," and quotes such eminent men as Bishop Butler and Jeremy Bentham as saying that "not only the law does but it ought to make the gratification of revenge an object." And no less an authority than Sir James Stephen, in his "General View of the Criminal Law of England," says that the "criminal law stands to the passion of revenge in much the same relation as marriage to the sexual appetite."

Much of this spirit of revenge or retribution still lingers in our laws, and is both consciously and unconsciously manifested in our criminal jurisprudence and in public sentiment. If you for one moment doubt the latter, analyze your feelings, impulses and emotions when contemplating a prisoner, guilty, or supposed to be guilty, of a grave offense against the laws. A careful scrutiny will, in most instances, reveal to you the surprising fact that they are akin to those which have so often disgraced Kansas by the brutal murder of the mob, overriding all forms of law, and breaking down the constitutional bulwark which guarantees to every man a fair and impartial trial by his peers before he shall be condemned and punished, and in so many instances tacitly approved by the more intelligent and moral part of the community by its silent acquiescence or mild condemnation of it.

In criminal procedure the injured party usually makes the complaint, appears in the role of prosecuting witness, employs counsel to assist the public prosecutor, and makes other efforts to secure the punishment of the offender; and often as much zeal is manifested to secure the conviction of an innocent as a guilty person.

The gratification of revenge is the real purpose of the barbarous doctrine of capital punishment which blots the fair pages of our statutes, but which an enlightened public sentiment nullifies, although its advocates now take cover under the specious plea of destroying him that society may be protected from a repetition of the offense.

Even the discretionary power conferred upon the judge in cases of conviction is a standing invitation to him to satiate the spirit of revenge incited in the breasts of the party directly injured, the general public, or himself.

A noted writer on Criminal Law has said, "The whole course of criminal procedure, from its inception to its close, partakes of the spirit of resentment." I know it is said that "the defendant is presumed to be innocent until he is

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proven guilty beyond a reasonable doubt"; that "this presumption is as irresistible as the heavens"; that "it hovers over the prisoner as a guardian angel." But is not this mere fiction? We manacle the prisoner, commit him to prison, or demand of him bail; on trial we put him in the dock. He is compelled to remain silent until the prosecution has done its worst to blacken his character, and under our law any juror entertaining the view that the penalty is too severe is disqualified, thereby securing jurors with the least delicate and humane sensibilities.

In certain actions of tort, punitive or vindictive damages are recoverable, the very terms implying revenge, or retaliation.

Execution against the body of the debtor is allowable under our statute, in certain civil actions, and upon a judgment against the defendant he can be imprisoned when no other purpose can be subserved than to satiate the aggrieved and defrauded plaintiff, the only condition being that the avenger pay the board of his victim.

Many other instances might be cited to show that the old barbarous theory of vengeance still occupies a prominent place in our jurisprudence; but the foregoing will suffice.

It thus appears that the retributive theory of punishment was the underlying idea of the primitive customs of the barbarians, and that it has not been wholly eliminated from the laws and minds of the enlightened people of this age. Yet as nations have become enlightened, and as knowledge has been disseminated and we have come to a better understanding of each other, so a more humane and charitable view of the offending members of society prevails; and as the severity of the punishment has diminished, so has the atrocity of crimes.

I know I am approaching controversial ground; that just and able minds vigorously contend against the thought suggested: but it seems to me that they either fail to grasp the basal idea which is the inspiration of the age, or confuse it with that of expediency and necessity. Bold indeed would be the person in this age who would openly insist that revenge is the sole or a principal object of punishment, notwithstanding the many outgrowths of its cancerous roots.

Some who are unable to conceive of a system of punishment without retaliation insist that it is the violation of the peace and dignity of the state that is to be atoned for. That prevention is one of the chief objects of punishment is conceded by all, and that fear of punishment is a powerful deterrent cannot be gainsaid, however much its power for doing so is over-estimated.

The most advanced thought, however, is that the reformation and improvement of the criminal is, or should be, the sole object of punishment. We may not all be ready to adopt this as the sole purpose, yet all will admit that it should be a principal one; for permanent and enduring protection comes only from a sacred regard by one member of society for the rights of others. Crime can be prevented only by taking away the causes which produce it, which reformation does, and thereby it operates as a preventive, and therefore includes the preventive theory. The atonement for crime by imprisonment or other

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punishment can no more be justified than the laceration of the body, as is done by the barbarians.

This doctrine of reformation, which in a sense means regeneration, is not new, but it is hard to inculcate it in the human heart. The great Teacher announced it in the Sermon on the Mount, exemplified it in his life, and left it as a most sacred heritage and ensample to his disciples. Paul, one of the greatest men who ever lived, inspired by its sentiment, said, "Recompense no man evil for evil"; and again, "Now we exhort you, brethren, warn the unruly, comfort the feeble-minded, support the weak, be patient towards all men."

Beccaria won enduring fame and became the greatest benefactor of his age through his "Essay on Crimes and Punishments," attracting greater attention than so small a book ever did before or since, concealing his identity through motives of fear and policy; and yet the only thing he did was to attune his great heart and illumined mind to this chord of divine sympathy, by which means alone every step in human progress has been made. He said: "The end of punishment, therefore, is no other than to prevent others from committing the like offense." "Such punishments, therefore, and a mode of inflicting them, ought to be chosen, as will make strongest and most lasting impressions on the minds of others, with the least torment to the body of the criminal." He argued against capital punishment and against unusual or unnecessary harshness, saying that "in proportion as punishments became more cruel, the minds of men, as a fluid rises to the same height which surrounds it, grow hardened and insensible."

Sir William Blackstone, in his Commentaries, written in 1765, in deploring the fact that under the laws of England there were 160 offenses declared punishable without the benefit of clergy, or with instant death, said that "so dreadful a list, instead of diminishing, increases the number of offenders."

It seems incredible that within a little more than one hundred years so trifling an act as cutting down a cherry tree, or breaking down a fish mound whereby any fish could escape, or the writing of an anonymous letter demanding money, the stealing of goods to the value of a shilling, should be punished with death; but such are the facts.

In a series of most excellent letters upon the prisons of Great Britain to the New York *Times*, written by Mr. Jay S. Butler in 1889, he says that "now there are but fifteen persons per year on an average hanged in England and Wales, as contrasted with a greater number in former years, and that the number of murders has not increased; . . . on the contrary, the application of the methods of civilization to the treatment of the criminal population has tended very greatly to lessen its numbers."

But of intenser interest, and in corroboration of these other statements, is the bulletin recently issued by the census office upon the subject of homicide in 1890, which is treated in an interesting editorial in the *Central Law Journal* of December 9, 1892. Mr. F. W. Wines, the expert who prepared the bulletin, says that the investigation has demonstrated the erroneous nature of certain prevalent beliefs as to the predisposing cause of crime and as to the effect of

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the severity of punishment upon the volume of crime. Where the ratio of the death sentences is the smallest there are the fewest homicides. In Rhode Island, where capital punishment is abolished, the ratio of prisoners charged with homicide is lower than in any other State of the Atlantic division, except Massachusetts. The greatest proportion of lynchings occurs where the percentage of long sentences is highest; and where the greatest number of executions exists there is also the greatest number of lynchings.

All this argues that punishment is of little effect as a deterrent; and the same spirit which insists upon vengeful punishment, under other circumstances becomes the most criminal.

I think that as a rule we look at criminals and the causes of crime erroneously. Criminals are such only by heredity and environment. For the former they can under no circumstances be held accountable, and in many instances the latter is uncontrollable.

Time does not permit me to enter at length upon a discussion of this subject of ever-increasing interest, and I will quote but a single extract from a high authority, as expressive of what seems to me to be a proper view of most offenders: "The great under class of criminals have more or less defective organizations, especially as relates to their nervous system, and more especially to the brain. They are more or less deficient in moral sense, showing in this respect a lack of development, or the result of decay, the best and last developed sense, the moral sense, disintegrating first of all. They are perversely wicked and indomitably inexpedient; committing crimes when doing right would be of more use to them. They are as passionate as the wild beasts of the forest, and as restless as the ocean that heaves at every gust of wind; they are at war with all mankind, and ever in commotion with themselves; they are like the ship beaten out by the storm, the ship without a compass, rudder, or captain; they are formed and fashioned by an evil genius whose name is Heredity."

In the past ten years I have tried and assisted in the trial of about one hundred persons accused of crime, mostly in their defense, embracing nearly every offense known to law, from murder to simple assault, and I cannot recall a single instance where some abnormal condition was not observed to which the crime could be distinctly traced; and whoever has had any considerable experience in the same direction has made like observations.

A case in point illustrates the proposition: A young man about twenty-five years of age had lived in the community for five or six years. By teaching school in winter and farming in summer he had accumulated some considerable property. He was active, and of good standing in professional, social, and church life. He was arrested for forgery. The proof of his guilt seemed conclusive. In looking about for a possible defense, the fact that the act was committed while defendant was convalescing from a siege of typhoid fever was seized upon as a hope. In studying the various phases of the case, and in searching for a motive which would be an incentive to the great risk taken, which bore no proportion to the gain, physiognomical peculiarities were observed which led to inquiries into his family history. He was lame in one hip.

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This was found to be congenital—an hereditary defect. His mother, still living, has been a subject of epileptic fits for years. A sister younger than he is foolish; his maternal grandmother was all her life subject to the same ailment as his mother. A maternal uncle was so mentally weak that while he could converse intelligently for a time he would often break off in the midst of his conversation and sing a silly ditty. He had a brother who was still weaker, who was a subject of guardianship by the religious body of which he was an adherent. But this was not all. A paternal uncle was a hopeless maniac, kept in chains for twenty years, and until his death; and witnesses who assisted in confining him were present to testify to these facts before the jury. Other members of the family were shown to be defective in mental powers and will. It would strike the average person that one with such antecedents could scarcely fail to succumb when exposed to the least temptation, and that to subject him to the same punishment as a strong but willful offender would be harsh indeed, more especially when the medical testimony was overwhelming as to the effect of his sickness upon his will-power, and of the inevitable results of such an ancestry. The only means of averting it was to interpose the plea of insanity; but Kansas has just reached the progressive state which England reached fifty years ago, when the "right-and-wrong test" was laid down in the McNaughton case, in the opinion of the fifteen judges to the House of Lords, and the jury under that rule could only convict, or perjure themselves if they acquitted him.

The public as a rule has neither the opportunities, inclination, nor power of discrimination to properly consider these things, and as a consequence the average jurors are in heathenish darkness in reference to them. I plead for a quickened conscience and enlightened sentiment that will enact laws to meet such cases.

Environment is an equally potent factor in moulding and directing men's lives.

Victor Hugo has written: "Paris has a child, and the forest has a bird. The bird is called a sparrow, and the child is called a gamin. This gamin has grown to manhood. At birth he was forsaken by those who should have been his shield and protection. He has from childhood been neglected by society. He grew up with naked feet, naked head, in rags, without knowing what to do to live. He cannot read; he does not know that he is a subject of law, and that there is a Heaven above him. He has no hearth, no roof, no family, no belief, no book. . . . His intelligence never opened, for intelligence, like flowers, opens only to the light, and he is in darkness. However, he must live and eat. Society has made a brute of him, and hunger has made him a thief."

There is in the world a mighty brotherhood of just such human beings. Intemperance, avarice, lust, cupidity, and other evil propensities and environments, augmented by ignorance, the zealous handmaid of criminal heredity, supplemented by that prolific incubator, idleness, create an irresistible force and array of perverse circumstances that make men and women criminal, for which they are no more accountable than they are for their physical conformation, or the color of their hair.

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I have in point a case from practical experience. A fifteen-year-old boy was arrested for the larceny of a butcher-knife — a thing of small value. After being in jail a day or two his case came to trial before a justice of the peace, and knowing something of his history, through sympathy and love of justice I appeared in his behalf. When the jury of twelve were summoned I was surprised to find it was "packed," there being in the panel not a single laborer, poor man, young man, or person who would naturally have any sympathy with him, although they consisted of bankers, loan agents, merchants, and of the very best and most rigid men of the community. It was a jury the like of which for good morals and intelligence I had never appeared before. The evidence pointed quite strongly toward the guilt of the boy, but I called the attention of these worthy jurors to facts within their personal knowledge that I thought had a bearing upon the case, and was proper for their consideration, which were in substance these: That he was motherless, and had a shiftless father who was quite indifferent to the welfare of his child; that he had lived from childhood in the little town, and was known to all; that he was never sent to school, although he had a bright mind, nor to church, although his mother had been a devout Christian; that he had no home, except as he found it here and there, and usually about a livery barn; that how he lived was a greater credit to his energy and ingenuity than to their thoughtful philanthropy; that day by day, as they had passed to and from their business, they had witnessed and deplored the fact that a criminal was growing up in their midst; that in response to the welcome chimes of the Sabbath bells, as with their bright and happy children they wended their way to church, they contrasted their condition as they passed the filthy urchin, and gave him a wide berth; that more than once, as the chilly blasts of winter brought the ruddy glow of healthy blood to their cheeks, they looked askance at this miserable little wretch as he drew closer around him the man's coat he wore, which nearly twice encircled his frail body, and helped to disguise the fact that it was the only garment that protected his breast, or as he twitched his pants a little higher at the waist, exposing the naked ankles of his sockless feet, encased in the worn-out and cast-away shoes of some full-grown person, and inwardly felt their contempt for him, if they did not express it; that not one of them had ever so much as greeted him with a pleasant word or smile, inquired of him how he got the food and clothing he had, poor as they were, or offered him employment, or ever said to him, "There is a better way — come with us and we will help you find it," but by their cold and heartless neglect were largely responsible for his condition; that there was not one criminal, but more than twelve, before that tribunal, and that before God and man the boy was the least guilty. And I challenged them to convict him in view of these facts, so clearly demonstrating their own criminality, and so forcibly exemplifying the doctrine that "I am my brother's keeper," without condemning themselves: and they did not do it.

Under the circumstances he could scarcely help being a criminal. But in almost every case there are similar mitigating or extenuating circumstances, which should be considered in determining the guilt and punishment of the

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accused; but they are not thought of or known, much less considered, by the administrators of the law.

It seems to me that a notable precedent applicable to such cases, and one we should try more to imitate, was established by the Master when the woman was accused and her guilt was established beyond all question. With his infinite mind He saw all the facts of heredity, environment, or others surrounding her case, and justice, which is always enshrined in mercy, could not punish, and those who ignored all these things were taught a lesson of self-condemnation when He said, "Let him that is without sin cast the first stone."

In certain cases the law looks at the infirmities of humanity, and mitigates or entirely relieves it from the consequences of its act, as in homicide under circumstances of great fear, violent passion, or extreme necessity. Why should we not go further, and consider these conditions of heredity and environment, which are as directly, though more remotely, involved as any of the other causes referred to? In either case it is a loss of equilibrium, a domination of some of the lower propensities, subjecting the will-power and moral nature to its sway. Drunkenness, in a certain sense, is an example of this, and is now almost universally recognized as a disease, which in a certain sense it undoubtedly is; but to my mind it stands in parity with those conditions which impel men to commit crimes.

If men are abnormal, weak, or deformed mentally or morally, it is inhuman and barbarous to condemn them to destruction or to penal servitude with the unjust discrimination we do to-day. Do not understand that I would turn offenders loose to prey upon society. I would have a permanent rather than a temporary protection from them.

I would have the laws enforced with swift and unerring certainty. But I would have them amended so that lawyers and jurors, and courts, would not be compelled to violate their solemn oaths to acquit men whom the letter of the law condemned, but which their inherent love of justice would not permit to be done, when these excusable conditions exist. So that men who are of that grade of responsibility where sanity and insanity melt together at their juncture as imperceptibly as do day and night in the twilight, could be found guilty of a *diminished* responsibility, by which means Dr. Wharton says, in his Medical Jurisprudence, the North German Code has attempted to solve this the most profound and delicate question which criminal jurisprudence can approach.

Our better natures instinctively rebel against the inconsiderate manner of treating criminals, both in and out of court, and of punishing them after conviction. The legal technicalities and subterfuges resorted to by us all, and so strongly condemned by the ignorant, unthinking layman, though often abused, are merciful expressions of that inborn desire of the human conscience for justice, and have often been the only means of protecting the innocent from the tyrannical Neroes who have perpetrated the greatest crimes in the fair name of justice, and to gratify the spirit of revenge heretofore mentioned. Fixing the extent of the punishment by jurors, as is the rule in some jurisdictions, is designed to give force to these excusable, extenuating and mitigating conditions, but falls short of doing so.

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The criminal has got out of relation to the established order of the community in which he lives; he lacks prudential balance, power of self-control; his will is unstable, and his whole nature is clouded by the morbid propensities of life. This is well illustrated by an incident which is said to have occurred in one of the great reformatories of the country, and is taken from an article on Penology, by Mr. Eugene Smith. It seems in that institution they have a class engaged in the study of practical ethics, in which every-day subjects are taken up and treated in their moral aspects. This excites great interest among the members, and thorough and unrestrained discussions are had. On one occasion the instructor submitted for their consideration the question as to whether they believed in the saying that "Honesty is the best policy," and if so, to give their reasons for the faith that was in them. One of the brightest members gave his ideas in substance as follows: "I believe that honesty is the best policy, from an illustration of it that came under my observation. I knew two brothers, young fellows, in New York, who were crooked and dishonest, and did not get along well. After awhile they went to Philadelphia and turned over a new leaf. They opened a clothing store there, attended closely to business, were perfectly straight and honest in their dealings, and they prospered. They enlarged their business, and secured the confidence of every one they dealt with. In this way they succeeded in borrowing $100. *Then they failed, and got away with every cent of their money.*"

On another occasion the question was put to the same class as to whether it is "better to beg or steal," and was answered thus: "A hundred years ago the question presented no difficulty. It would have been better then to beg than steal. But *now*, when such great progress has been made in prison reform, it would undoubtedly be better to steal than to beg; for the thief, being imprisoned, would enjoy all the benefits of a reformatory training, which would make him so well able, on his discharge, *to take care of himself, that he would never afterwards have occasion to steal or beg.*"

These sentiments, uttered with all earnestness and in all sincerity, show an intelligent discrimination, yet an unbalanced moral nature, as much askew as that of a lunatic, although, of course, in a different way. It is a species of moral insanity, which, although repudiated by many eminent specialists, commends itself to most discriminating minds as being well founded.

I would above all things have a broader and more charitable view taken of mankind. I would teach men that they owe a sacred duty to these weak and offending members. I would have more attention given to the individual and less to the incongruous mass called society. There is not so much difference in men as we sometimes think. The wonder is that humanity does so well, considering its besetments.

"In men whom men condemn as ill,
I find so much of goodness still;
In men whom men pronounce divine,
I find so much of sin and blot,
I hesitate to draw the line
Between the two, when God does not."

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When men are convicted of offenses I would not consign them indiscriminately to those prisons most of which are to be compared only to the notable one described by Dante, over which was the inscription, "Abandon hope, ye who enter here." I would not consign these most helpless of all people, who need the sympathetic hand and heart as no other mortals do, to a place where none of these influences can reach them, and where their governors as a rule have nothing to commend them except the fact that they have rendered political services to the appointing power, to be "farmed out" to be treated in many instances so bad that the worst horrors of the galley and of the Siberian mines are not unjust comparisons.

I would start the ring of the mason's trowel, the sound of the hammer and the buzz of the carpenter's saw upon the dead-walls of the reformatory of the State, which proclaims in pathetic tones the sentiment of indifference and immorality that hangs like a pall over this grand people whose progressive spirit conceived this worthy institution. I would put the least culpable in it. I would build other like reformatories for the more hardened, so-called *incorrigibles*, and would humanely punish when necessary: but I would never forget that these offenders are human; that they are *my* brothers, *your* brothers. I would give them employment. I would teach them that there is not only a "way," but that there is a "highway"; and, in the pathetic language of Gough, I would find the door to each of their hearts, and "would knock and knock, and just so sure as it is done, by-and-by the quivering lip and starting tear will tell you you have knocked at the heart of a man, and not a brute." And as Emerson, whose every thought seems almost inspired, says: "Our acceptance of the sentiments of love throughout Christendom for a season would bring the felon and the outcast to our side in tears, with the devotion of their faculties to our service."

These things are not impracticable, nor visionary. Our own reform school for boys demonstrates it.

At Elmira, N. Y., under the charge of that practical philanthropist, Colonel Brockway, a grand institution is maintained. Offenders are punished, at the same time educated, taught trades, reformed, remodeled, regenerated, shown the right road, released, and sent back into the world to bless it, their faculties and lives consecrated to the betterment of their fellows. In other portions of the Union like institutions are established, and are doing good work; while England is keeping well apace, if not actually leading, in the adoption of these more enlightened methods.

Brethren of the bar, the opportunities of the age in which we live are great; their numbers and diversity confound our reason; we are blinded by their effulgence, consequently freighted with weighty and mighty responsibilities, whether we realize it or not.

As administrators of the law we should see that it is done according to the loftiest ideals of justice and mercy. To accomplish this, it is our paramount and overshadowing duty to not only protect, defend and preserve our legal institutions unimpaired, but to bring them up to their fullest efficiency. This

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implies progression — a breaking away from some of the ideas and precedents which originated in a misconception of the rights and privileges of our fellow-men, and of our duties toward them.

Do you, judges, who impose the penalties of the law, always temper your judgments with mercy? Do you, public prosecutors, always seek to bring out the whole truth, regardless of results, or do you suppress facts favorable to the accused, and strive for a conviction regardless of the question of his guilt or innocence? Do you of the ranks, whose high prerogative it is to defend an erring fellow against the powers of the State, avail yourselves of the real defenses which I have indicated, and which exist in nearly every case, or do you resort to the questionable and sharp practices which so justly bring reproach upon our profession?

What are the members of the bar of Kansas doing to bring our great penal institution up to the highest standard, where nearly one thousand human beings (perhaps no worse, on an average, than many thousands who enjoy all the privileges of liberty) are spending their lives, and in such a way as to make its average duration but seven years? What are we doing to prevent the young boys, when "arrested for some trivial offense," from being put into our county jails, as they are all over the State, with the most hardened criminals, and contaminated with all their vices? What are we doing toward creating a public sentiment, and toward securing the enactment of laws and the establishment of institutions that will benefit these criminals, with whom we are brought in contact more than is any other class?

If we are not considering these matters, and many more of a kindred nature, we are not doing our whole duty, and are living below the privileges of our high profession — a profession that affords greater opportunities for doing good than any other vocation in life. We will better honor it, and it will detract nothing from our manhood or intellectual vigor, or power for good, or personal enjoyment, to imbibe a little more of the spirit of John Howard, Elizabeth Fry, Wendell Phillips, Ralph Waldo Emerson, Abraham Lincoln (that great and good man), the late ex-President Hayes, and the many other great minds who have immortalized themselves and blessed humanity by letting their light "shine in darkness even though the darkness comprehended it not."

Let us be more charitable in our views and treatment of criminals, bearing in mind our own fallibility.

"Let us look into our bosoms
For the key to other lives,
And with love toward erring nature,
Cherish good that still survives;
So that when our disrobed spirits
Soar to realms of light again,
We can say, dear Father, judge us
As we judge our fellow-men."

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IF NOT, WHY NOT?

BY E. F. ROBINSON.

The lawyer has a right to pride in his profession, for since long before the stars led the Chaldean sages to the infant Saviour's cradle the Dracos, Papinians, and Blackstones; the Mansfields, and Marshalls; the Websters and the Choates, have been the recognized protectors of all safer progress. While it is not true that all lawyers and law-givers have been up to the desired ideals, it is true that all high standards have been either planted or characterized by the wisdom of the bar. In this connection it is of interest to inquire whether we, individually and collectively, are to-day keeping pace with our duty and opportunities in not only sustaining and maintaining, but in advancing the dignity and character of the lawyer and his forum, for if it be true as Galileo asserted that the world does move, we may not stand still.

A friend says that, whether individual or class, one may do one's best and yet even false criticism will continue—and the suggestion has merit; but let us distinguish. Some one has not inaptly defined reputation to be what others think of one, and character as what he thinks of himself; this on the theory that what one really thinks of one's self is a true likeness when photographed, while what others think of him may or may not be correct, as he alone knows the lights and shades necessary to complete the silhouette; he alone can name the tints that will complete the true picture. On the premise laid down, that the lawyer and his forum have been given a reputation up to deserts, it is clearly his duty to not let the substance become less than the shadow; for of his character, as suggested, he is the sole architect, while his reputation may suffer from circumstances and misunderstandings beyond his control.

What is true of an individual is largely true of a body or society, though not in the same degree, as all concerted action must partake more or less of the element of compromise, either as to the policy itself, or the method of its adoption. And for the legal fraternity of Kansas—and this includes courts, judges, officers, witnesses, and juries—whose character and reputation it is the special business of this Association to build up and maintain: are we doing the most possible in our every-day practice to keep both, and especially the former, aloft? And if not, why not?

At the last session of this body able criticisms were offered as to our duty in the line of keeping incompetents out of the ranks, and in all that was suggested certainly none too high a key was sounded; for without proper mental equipments, both natural and specially acquired, one cannot successfully do his part in a calling whose every success depends upon both native ability and special preparation. But it is to some other lines of duty, less generally considered but by no means less important, that this paper is more particularly addressed. It may

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be said, and is true, that in no other occupation is there so strong pressure to induce one to chance permanent character and standing against immediate gain, local applause, and temporary notoriety; and it may be admitted that it is not always easy at the time to correctly weight the contending forces. An impatient and often dishonest client, supported by witnesses full of sympathy and sharing in feelings of revenge; pride and ambition in winning one's battles; future business dependent, or at the time seemingly so — all urge in the direction of playing for temporary gain at the expense of the grand and more enduring success, which only continuity of high-minded purpose can attain. Yet all these only argue for a higher discipline if needs be, as no credit is due one for not eating the forbidden fruit who was never let into the sacred garden; but to him who, being invited, declined with thanks.

Then, too, notwithstanding the high respect in which the legal profession and courts have been generally held by thinking people, a large, and it is to be regretted, growing modern element takes pride in representing the lawyer as willing to do anything honorable or dishonorable; witnesses as presumably ready to make oath as the seeming necessities of the case demand; courts as willing to be duped or bought, and juries waiting to be packed or bribed. And one of the questions propounded here is, Do not too many of us, negatively at least, furnish testimony to support the indictment? And if it is a fact that we do, then this lack of properly standing up for ourselves, our calling and our forums, is a proper subject of criticism. Not that undue affectation shall be encouraged, but rather that, in its proper place and at times appropriate, the lawyer shall be the champion in sustaining and maintaining the honor of his profession, the dignity of the forum in which he acts, and the obligations resting upon him and all others in the performance of duty in the sole arena where all act under the solemnity of an oath, the lack of respect for which is one of the growing dangers of modern civilization. And in the educational effect of one's attitude the trend of his assumption and the manner of his demand for proper recognition are often more important than he imagines.

A short time since there appeared in one of the great reviews an article under the extravagant title of "The Benefits of Hypocrisy," and those of you who read it were no less surprised at the merit of the argument adduced than you had been at the audacity of one who should attempt a defense of so seemingly defenseless a proposition. From the key of that discussion — that one, whether man, court, state, or nation, not only educates toward, but fast becomes what he assumes to be — many lessons may be learned, and some in the direction of this half-hour's study. Let the lawyers fall in, even negatively, with this suggested theory, that they are the managers of duplicity, deceit, and bad faith; that clients and witnesses are to be by them coached into dissembling and perjury; that courts by them can be hoodwinked or "fixed," and that juries by them can be packed and bribed, and you have made a good start toward the education of the masses that lawfulness and lawlessness are synonyms, not only in the dictionary, but in the rights of all to a choice of the acts of which the words are only signs. On the other hand, and from the same starting-point,

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let the demand of the bar be in favor of discountenancing anything but high standards, and the effect will chill all disposition to question or treat lightly the honesty and dignity of courts and those who conduct them. From the foregoing it must not be conceived that there is any disposition to dress bar and witnesses continually in Prince Albert coats of shiny black, and courts in gown and wig, for the purpose of appearing foreign and exclusive — far from it; but it is to suggest that a falling-in by the bar with the theory that courts are places where perjury may be expected, and that law is a profession in which men engage to defeat the ends of justice, shall be discountenanced. To illustrate: It only needs suggesting that utmost good faith among ourselves must be practiced; for, with the infirmities of all, we are suspicious enough at best, and especially under the heat of trial, added to the press of other business which accumulates during courts' sessions. Yet how often it is that one is annoyed beyond quiet endurance by advantage being taken of an honorable agreement that a certain thing should or should not be done, but which, by relying on the standard being here argued for, was not reduced to writing. A client, sore over a defeat which possibly this treachery brought about, charges you with neglecting his business, if not with bad faith as well, and you in turn, smarting under the double friction of just indignation at the deceit as well as the client's distrust, in language possibly unwise, though warranted (if its only effect were to express indignation), censure the attorney who practiced the deception. But by the world's verdict you have simply advertised that lawyers are dishonest, and cannot be trusted even among themselves; and if not among themselves, then why by others? it argues. To add to the ill effects (for wrongs always get the advantage), he who was mean enough to do so unprofessional a thing could not forego the satisfaction of telling his client how he gained the point; and his client, though elated at winning at any cost, in time concludes it was but a game of deception, and he by luck had won. Of course you resolve that henceforth all agreements with that attorney shall be reduced to writing, but the leaven of distrust will not stop fermenting, and for years, possibly, its influence prejudices the bar.

Again, turn the lights a quarter to another picture. An attorney was arguing a case, hardly reaching misdemeanor importance, and condoned the crime of perjury in order that a finding necessarily involving it might be brought in by saying, in substance, that it was a matter of much pride to the witness, and that if he had for that reason sworn falsely it was not strange, as he, the counsel, was not sure just what *he* would have done under the same circumstances, and would not like to be tested. The verdict of the crowded house was that perjury is not a grievous sin, and may be expected if one's pride even is to be hurt by the truth, as Judge Blank had openly argued that he would not hesitate to swear falsely if the truth would hurt his pride. True, the judge had not said so; yet the construction was reasonable, at least no broader than experience teaches us attaches to the careless use of handling important but easily misunderstood subjects.

But, says one, you are philosophizing on too high grounds, and will next be adding that lawyers must first learn the side upon which the right is, and only

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accept retainer on that side; that courts would be only public confessionals, where after all had bowed down each must expect justice from only a moral standpoint, and that as seen by some extremist. Not at all. It is not the purpose of this paper to argue that if these suggestions be followed an immediate millennium will be ushered in, but it is to help keep the character of bench and bar above reproach by their direct supporters acting well their part, where all the honor lies. There is one person in the world to be envied, and this paper would have the lawyer and judge join him: it is he who, without over-confidence, as also without mental dyspepsia, and striving to find the right, does each day's work honestly, frankly, patiently for the right as he sees it at the time, and then goes on in the same spirit to new duties as they arise, remembering always that just motives energetically supported will in time conquer, though often temporarily misunderstood, and overcome by ambitious and unscrupulous designers. Each of us in looking around can locate the attorneys who have risen above mediocrity, and in nearly every case can trace their success to that continuity of better purpose here represented as being the only safe ground upon which to risk the battle we are all fighting. On the other hand, the members of the bar of seeming ability who attempted short cuts to success by working on a plane too low for permanent confidence to support, are side-tracked into the weeds and hedges of shifting adventurers, often driven more than once from lucrative fields upon which their less brilliant but more stable competitors of continuity of character have fared well.

And in this hurrying, rushing age of American progress, no element more strongly urges the younger members of the profession to questionable schemes than the desire for immediate recognition. Our European cousins smile, and with some reason, at Young America's haste. A distinguished foreigner not long since, in commenting on our systems, made some comparisons not altogether flattering respecting our four-year university graduates; our attorneys admitted to practice who often lacked the basis of even an English education up to a full grammar grade; our ministers preaching to intelligent audiences who had not reached sophomore standing in either academic or biblical study; and our courts often presided over by men elevated by some tidal wave of politics, who had neither education nor adaptability for the law, much less to sit upon the bench. And while we parry such attacks by alleging that they come from those who would find fault because our ways are not always the old ways, nevertheless candor among ourselves compels an admission that the criticism hurts because of the truth it contains, though offered in a spirit calculated to induce resentment. And we ask ourselves whether it is not true that haste may be waste sometimes, and whether it may not be true that not all change is progress. As to what is and what is not proper practice we may not all be agreed, as we may also honestly differ as to the stopping-places along some of the lines here suggested.

An incident occurred in a Kansas court, some time since, which actively set the writer thinking in this direction. The plaintiff, a witness, was a Missourian, and in build, tawny complexion, cut of hair and general expression a typical

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slaveholder. By acquaintance it had been learned that he was an ardent Free-State man, and a Union soldier for nearly four years, and had been active against rebellion in his community when such activity tried men's principles, and courage as well. It being known that there would be several Union soldiers on the jury, counsel suggested that plaintiff should in preliminary examination be asked such questions as would bring out, either directly or on cross-examination, his soldier record. But the old veteran would not have it so, and replied with some warmth that if he could not win a law suit without self-eulogy for having done his duty, and no more, when his country needed him, he would lose the amount involved, though it amounted to some thousands. And in this position he was determined, and the case went to trial accordingly; but the same firmness and candor exercised in this determination made him an invincible witness, and the case was won. Whether his ideas of honor may have been too high keyed, or not, the illustration suggests a simplicity of moral courage which all admire when the genuine is found;—and without claiming or assuming too much, so as to admit a charge of super-sensitiveness or affectation, a good, broad footing, based upon reason, in the ethics of our code, will no more than offset the swervings to which we are all liable under constant pressure; for in these our own fields we may not shield ourselves behind the claim that we are doing as well as the world expects, for this world, our world, the courts, bench, and bar, are what we make them, and will in time, if we do our whole duty, be so judged.

REPORT OF COMMITTEE ON LEGISLATION TO CONTROL AND REGULATE ADMISSIONS TO THE BAR.

BY W. F. GUTHRIE.

To the President and Members of the Kansas State Bar Association: Your committee will weary you little with either platitudes or pyrotechnics. We assume that you are familiar with the *patron* of the civil law and his *honorarium*, as also with the course in gastronomics by which the brethren of Blackstone's day ate their way into the Inns of Court. The subject is preëminently a practical one—a problem of to-day. The question of legal education and admission to the bar is a question of plain, obvious, but much neglected, duty. Cavil as its detractors may, our profession holds within its hands the laws, lives, liberties and property of the community. By it in fact are, and of necessity must be, made the laws of the State. By it must be determined, conserved and protected all the multitudinous and varied interests of the busy life around us. So long as civilization demands that its even existence shall not be disturbed by the savage arbitrament of the club, so long must the lawyer superintend and regulate the orderly determination of disputed rights and duties. It is a grave

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responsibility, not to be lightly or ignorantly assumed; not to be forgotten. It is a responsibility, not of the lawyer, but of the lawyers. It is too often taken for granted that each attorney is responsible only for himself; that it is a question solely between the individual and his client. It is not so. The sins of the individual are visited upon the bar as a whole. This is justly so. Ours is a fraternity, admission to which we determine for ourselves. No lawyer becomes such except by the consent and approval of other lawyers. When we have admitted another to our ranks, the public rightly holds us responsible for the ability and integrity with which we have accredited him. When a brother lawyer has brought ruin to his client and shame to his profession, can we plead that it is not ourselves who have made both possible? This, gentlemen of the Bar Association of Kansas, is the thought we desire to impress upon you. It is our solemn duty that the standard of legal education and admission to the bar shall be such, and so enforced, that the wayfarer who enters under the sign-board "Lawyer" may be reasonably assured of finding capacity and integrity beyond; that when he confides life, liberty or property to him for whom we have avouched, there shall be no disappointment.

The incapable or untrustworthy lawyer is a curse to the community. He must have bread. If he cannot obtain it legitimately he will illegitimately. He is an inciter of strife. His counsels mean litigation, not justice. Prolongation, not determination of controversy is his aim. His advice is not in the interest of his client, but of himself. Clients do not offer: he makes them. Litigation does not exist: he creates it. If the incapable lawyer is not dishonest in the first place, his necessities will probably make him so. The honest incapable is almost as bad, as he scatters right and left advice on which fortunes are wrecked, costs piled up, bad blood engendered, or futile strife prolonged.

The inefficient and untrustworthy lawyer exists by grace of the thoughtlessness of the bar and the laxity of the law and practice in reference to legal education and admission to the bar. The evils that arise therefrom are generally known. There is a universal desire for their abatement. They continue by reason of the failure of the bar as a whole to recognize their responsibility in the matter. We desire in this report to arouse a sense of such responsibility. The *remedy* is in a system of admission that will bring this responsibility home to the factor determining admission.

The law of Kansas provides that legal qualification and moral character shall be ascertained by the district judges. The practice is to refer this question to a committee specially appointed as each application is made. The result is but slightly satirized in the tale of the admission of Mr. Hic Jones of Paint Creek.

The system is wrong. Examinations should not be made singly by local judges. They are occupied with successive details and special cases. They have little occasion or opportunity for consideration of the subject of the law in its synthetic whole. They are not prepared to take up single applicants, sprung on them without notice at irregular intervals, and carry them through such a review of the legal system as will fairly and fully test their capacity;

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nor have they time. A committee appointed for each applicant is even worse. The same reasons exist to a greater extent even than with the judges. In most cases the applicants are personal friends, who would be offended at rejection, and the examiners feel little occasion to incur his ill-feeling or resist his importunities. The result you all know. Not one applicant in twenty who presumes to think he should be admitted is refused. We do not deny that the applicant is sometimes solemnly pledged not to practice until he has read a little further, or only admitted on his promise that he will go into some foreign jurisdiction to find his victims. You will recall other pretexts and excuses. Is it right to turn such a class of lawyers loose on an ignorant and unoffending community? Most clients have but their single law suit. But it is all in all to them. The client has had no prior experience with lawyers. He does not know one lawyer from another, except perhaps he has heard of the reputation of some more eminent practitioner. But he is afraid to employ him. He fears the great lawyer, and the greater fees of which tradition speaketh. He does not know that the good lawyer makes his living from many successive clients, and can afford to, and does, treat each one better than the inferior man who must get a year's income from his occasional prey. The consequence is that the client selects by chance the proprietor of the first lawyer's sign he meets. The probable result you know. That result you, gentlemen, as a body are cursed for. That result you are responsible for. You have held out the man behind the sign as competent and honest.

Your committee has addressed a circular letter to eminent practitioners and judges throughout the country. All, where the law is lax, deplore its laxity. The American Bar Association has a standing committee on the subject, earnestly working to elevate the standard everywhere. Many State bar associations have similar committees. There has been a recent tendency throughout the nation to amend the laws direct, or achieve the same end by rules of court. Even Oklahoma proposes a law on the subject at the present session of its Legislature. Shall progressive Kansas remain in the rear of the procession?

The systems in the different States vary greatly. In some it is practically the same as in this State; in others examinations are held before the Supreme Court judges in person; in others before standing committees of the bar appointed by the Supreme Court; in Montana by standing committees in each district, appointed by the Supreme Court. In some the examinations are oral; in others written; in others both. Many States prescribe a fixed course of study; many a fixed time; others make a clerkship also necessary. It would be idle to attempt to collate all the systems in detail, although you may be interested in knowing that in fire-eating South Carolina the lawyer is not admitted until he takes an oath not to engage in dueling. In the other States it is not supposed that forensic quarrels are carried outside the court-house. The Indiana constitution secures to every voter the right to practice without other qualification. Although much deplored outside of Posey county, this law has not been changed, because of the necessity of revising the constitution to do it. In the opinion of your committee, the best systems are those of the city of

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Philadelphia, and the States of New York, Wisconsin, and Minnesota, on which the suggestions of your committee are largely based.

Your committee recommends that this Association take upon itself the burden of procuring legislation in this State changing the present system of admission to the bar. No time of study should be prescribed. An eminent Missouri judge rightly says that two years is sufficient for a qualified man, and fifty years too little for any other. The actual attainment should be the standard. To fix a time for acquiring knowledge is a confession that existing means of ascertaining the actual amount of it are deficient. The range of subjects upon which the applicant is expected to be qualified should be pointed out, and, within reasonable limits, the course of study by which he is expected to acquire qualification. There should be a standing committee or board of examiners, the membership of which should change progressively, so that there shall always be some experienced members upon it. They should be appointed from different sections of the State by the Supreme Court. The board should hold regular meetings, say quarterly, twice at the capital and twice at some western city, or the meetings could be ordered by the Supreme Court as experience might dictate. Examinations should be written, and perhaps oral also. The board should receive such compensation as would be reasonable, but not sufficient to make membership the object and prize of politicians. Membership should be considered an honorable duty, and the allowance only sufficient to prevent actual loss in the service. A small examination-fee should be charged, to discourage idle applications. Massachusetts will not allow a second examination until at least six months after a prior failure. The applicant should, a fixed period before the regular time of examinations, notify the examining board of his intention of applying, with such certificates as to moral character and study as the rules of the board may call for, so as to give it time for such further investigation into the personal character of the applicant as the board might deem proper. Graduates of law schools, the course of study and examinations of which were approved by the board, might be admitted on certificates of the school officers as to moral character. Non-resident attorneys should be admitted to practice in special cases on motion; but those seeking to become regular practitioners in this State should show their qualifications as well as others. Many a man is now admitted in one State that he may break into the practice in another without examination. The board of examiners or the Supreme Court should be allowed to formulate rules for carrying the law into effect. Probably some of the above ideas could be embodied in such rules better than in th statute. Females should be distinctly recognized as admissible to practice.

These suggestions may seem radical, but they are all in practical force in other States, and meet the approval of the best men at the bar, which they distinctly tend to elevate morally as well as mentally. The privilege of practicing law is a high and responsible one. It should not be lightly conferred. No man capable of faithfully fulfilling his obligations as an attorney would object to the conditions imposed. The small extra trouble and expense involved would serve to give the applicant a higher appreciation of the duties he was

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about to assume. The result would be to increase the efficiency and service of the bar to the community, and heighten the respect in which it would be held.

This committee is special, and not one of the standing committees of the Association. It was expected to make an effort to procure proper legislation. Existing legislative conditions have made the effort inexpedient at this time. The committee should be made a standing one, and the work both of enlightenment and direct effort at legislation continued.

Meanwhile, your committee believes that much good might be accomplished by an accredited committee of this Association making an endeavor to influence the district judges to concerted action towards raising the standard under existing law. We believe that upon calling the attention of the judges to the subject, they would be glad to make rules of court appointing standing committees in their respective districts, which would conduct examinations at regular periods, with some thought directed to the subject and with some fixed standard. In the interests of uniformity, suggestions might even be received from a standing committee of this Association as to the course of study and range of examination. Perhaps a uniform series of questions, prepared by such a committee of this Association, for examinations in such districts as might approve of the plan, might be acceptable to such local committees. An effort of the kind could not fail of some good, if it went no further than directing attention to the subject.

These suggestions your committee respectfully reports.

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Constitution and By-Laws.

CONSTITUTION.

ARTICLE 1. The name of the Association shall be The Bar Association of the State of Kansas.

ART. 2. The object of the Association shall be the elevation of the standard of professional learning and integrity, so as to inspire the greatest degree of respect for the efforts and influence of the bar in the administration of justice, and also to cultivate fraternal relations among its members.

ART. 3. The officers of the Association shall be a President, Vice-President, Secretary, Treasurer, and an Executive Council of five members.

ART. 4. The President shall preside at all meetings of the Association, and shall open each annual meeting of the Association with an appropriate address. The Vice-President shall preside in the absence of the President; and in the absence of both, a president *pro tem.* may be elected by the meeting. The Secretary shall keep a record of all the proceedings of the Association, and conduct the correspondence of the Association.

ART. 5. The Treasurer shall keep an account of all funds of the Association. The Executive Council shall manage the affairs of the Association, subject to the constitution and by-laws.

ART. 6. A quorum for the transaction of business shall be twenty members.

ART. 7. No person shall be admitted to membership of this Association who is not a member of the bar of the Supreme Court, and who has not been engaged in the regular practice of the law for one year next preceding his application for admission.

ART. 8. All applications for membership shall be referred to the Executive Council, who shall report the same to the Association, with their recommendation thereon; and no person shall be admitted to membership except by a two-thirds vote of the members present. Each member shall pay an admission fee of five dollars, and annual dues of three dollars.

ART. 9. The annual meetings of the Association shall be held in January of each year, at the capital, at such time as the Executive Council fix. Thirty days' notice of the annual meeting shall be given by the Secretary. Special meetings may be called by the Executive Council, of which meetings thirty days' notice shall be given to the members by the Secretary.

BY-LAWS.

SECTION 1. The Executive Council shall, on or before the first day of May of each year, designate such number of members, not exceeding six, to prepare and deliver or read at the next annual meeting thereafter appropriate addresses

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or papers upon subjects chosen and assigned by the Council to each of said members, as may be so selected for such purpose.

SEC. 2. The order of exercises at each annual meeting shall be as follows:

1. Opening address by the President.
2. Consideration of applications for membership.
3. Reports of Secretary and Treasurer.
4. Report of Executive Council.
5. Reports of standing committees.
6. Reports of special committees.
7. Delivering and reading of addresses and papers.
8. Miscellaneous business.
9. Election of officers and delegates to American Bar Association.

SEC. 3. There shall be chosen by ballot, at each annual meeting, three members as delegates to American Bar Association for the ensuing year.

SEC. 4. All addresses delivered and papers read before the Association, the copy of which is furnished by the author, shall be lodged with the Secretary. The annual address of the President, the reports of committees, and all proceedings of the annual meeting, shall be printed; but no other address delivered or paper read shall be printed, except by order of the Executive Council.

SEC. 5. The terms of office of all officers elected at any annual meeting shall begin at the adjournment of such annual meeting, and end at the adjournment of the next annual meeting. And in case of any vacancy, the Executive Council shall appoint some member to fill the vacancy, who shall hold until his successor is elected.

SEC. 6. The Treasurer's accounts and report shall be examined annually by the Executive Council before their presentation to the Association, and the Executive Council shall report the result of such examination of the Treasurer's report and accounts to the Association at its annual meeting.

SEC. 7. The Executive Council shall cause to be printed such number of copies of the constitution and by-laws of this Association, with a roll of the members of the Association, as it shall deem best, not exceeding one thousand copies, and shall distribute the same to members of the Association, and to such other persons, or associations, or societies, as they may deem prudent; and shall, with the proceedings of each annual meeting, print a roll of the members of the Association.

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Roll of Members.

NAME.	ADDRESS.	ADMITTED.
Abbott, A. J.	Garden City	Jan. 8, 1890.
Ady, J. W.	Newton	June 4, 1884.
Alden, H. L.	Kansas City, Kas.	Jan. 13, 1885.
Alford, D. S.	Lawrence	June 6, 1883.
Allensworth, J. T.	Atchison	June 6, 1883.
Anderson, T. P.	Kansas City, Kas.	Jan. 8, 1889.
Angevine, C.	Mankato	June 6, 1883.
Austin, Edwin A.	Topeka	Jan. 13, 1886.
Austin, James H.	Kansas City, Mo.	Jan. 9, 1883.
Baker, Sperry	Paola	June 6, 1883.
Benson, A. W.	Ottawa	Jan. 9, 1883.
Benton, C. E.	Iola	Jan. 8, 1890.
Bergen, A.	Topeka	Jan. 11, 1887.
Bertram, E. S.	Council Grove	Jan. 11, 1887.
Bertram, G. W.	Oberlin	Jan. 13, 1885.
Bird, W. A. S.	Topeka	June 6, 1883.
Bland, W. T.	Atchison	Jan. 25, 1892.
Blue, R. W.	Pleasanton	June 6, 1883.
Bond, T. L.	Salina	Jan. 13, 1886.
Bowman, C. S.	Newton	Jan. 8, 1890.
Bradford, S. B.	Topeka	Jan. 3, 1888.
Brewer, David J.	Leavenworth	Jan. 9, 1883.
Broderick, Case.	Holton	Jan. 9, 1883.
Brown, Milton.	Garden City	Jan. 8, 1890.
Buchan, W. J.	Kansas City, Kas.	Jan. 9, 1883.
Bucher, Charles.	Newton	June 4, 1884.
Buck, J. Jay	Emporia	Jan. 11, 1887.
Call, Henry L.	Topeka	Jan. 8, 1889.
Campbell, A. B.	Topeka	Jan. 12, 1887.
Campbell, W. C.	Topeka	June 6, 1883.
Campbell, W. P.	Wichita	Jan. 9, 1883.
Case, George H.	Mankato	Jan. 9, 1883.
Chandler, George	Independence	Jan. 9, 1883.
Clarke, Fabius M.	New York City	June 6, 1883.
Clarke, W. B.	Kansas City, Mo.	Jan. 13, 1885.
Clogston, J. B.	Eureka	Jan. 13, 1885.
Cornell, George G.	Alma	Jan. 4, 1888.
Crozier, Robert.	Leavenworth	Jan. 9, 1883.
Cunningham, E. W.	Emporia	Jan. 8, 1890.
Coleman, C. C.	Clay Center	Jan. 31, 1893.
Dassler, C. F. W.	Leavenworth	Jan. 8, 1889.
Day, John W.	Topeka	June 6, 1883.
Devenney, A. S.	Olathe	June 6, 1883.
Doster, Frank	Marion	Jan. 9, 1883.
Douglass, G. L.	Wichita	Jan. 8, 1890.
Douthitt, Wm. P.	Topeka	Jan. 13, 1885.

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ROLL OF MEMBERS — CONTINUED.

NAME.	ADDRESS.	ADMITTED.
Earle, Lucien	McPherson	Jan. 8, 1889.
Eaton, Robert M	Atchison	Jan. 8, 1889.
Egan, J. G	Topeka	Jan. 25, 1892.
Ellis, A. H	Beloit	Jan. 8, 1889.
Emery, R. M	Seneca	Jan. 8, 1889.
Everest, A. S	Atchison	Jan. 9, 1883.
Falloon, James	Hiawatha	June 6, 1883.
Fenlon, Thomas P	Leavenworth	Jan. 9, 1883.
Ferry, L. S	Topeka	Jan. 25, 1892.
Foster, C. G	Topeka	June 6, 1883.
Foster, F. H	Topeka	Jan. 11, 1887.
Freeman, W. H. H	Kansas City, Kas.	Nov. 28, 1883.
Freeman, Winfield	Kansas City, Kas.	Jan. 25, 1892.
Frith, J. Harvey	Emporia	Jan. 8, 1889.
Garver, T. F	Salina	June 6, 1883.
Getty, George	Syracuse	Jan. 8, 1890.
Gillett, F. E	Kingman	Jan. 13, 1885.
Gillpatrick, J. H	Leavenworth	Jan. 9, 1883.
Glasse, W. B	Oswego	Jan. 9, 1883.
Gleason, H. W	Hutchinson	Jan. 20, 1891.
Gleed, C. S	Topeka	Jan. 13, 1886.
Gleed, J. W	Topeka	Jan. 8, 1889.
Godard, A. A	Topeka	Jan. 8, 1890.
Graves, Charles B	Emporia	Jan. 9, 1883.
Green, Geo. S	Manhattan	Jan. 11, 1887.
Green, H. T.*	Leavenworth	June 6, 1883.
Green, J. W	Lawrence	Jan. 9, 1883.
Griffin, Chas. T.*	Atchison	June 6, 1883.
Grattan, G. F	McPherson	Jan. 25, 1892.
Guthrie, John	Topeka	June 6, 1883.
Guthrie, W. W	Atchison	Feb. 3, 1885.
Guthrie, W. F	Atchison	Jan. 25, 1892.
Hadley, D. B	Kansas City, Kas.	Jan. 8, 1889.
Hagerman, James	Kansas City, Mo.	Jan. 13, 1886.
Hallowell, J. R	Wichita	June 6, 1883.
Hamilton, A. L. L	El Dorado	Jan. 8, 1890.
Harkness, F. P	Clay Center	Jan. 8, 1889.
Harris, Amos*	Wichita	Jan. 9, 1883.
Harris, Vernon H	Lawrence	Jan. 4, 1888.
Harrison, T. W	Topeka	Jan. 3, 1888.
Haun, T. S	Jetmore	Jan. 8, 1889.
Hayden, Charles	Holton	June 6, 1883.
Hayden, Sydney	Holton	June 6, 1883.
Hayward, F. M	Kansas City, Mo.	Jan. 13, 1886.
Hessin, John E	Manhattan	Jan. 8, 1890.
Hick, R. S	Westmoreland	Jan. 13, 1885.
Hogan, E. G	Ravanna	Jan. 20, 1891.
Holt, Joel*	Beloit	Jan. 3, 1888.
Hopkins, Scott	Horton	Jan. 3, 1888.

*Deceased.

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ROLL OF MEMBERS—CONTINUED.

NAME.	ADDRESS.	ADMITTED.
Horton, Albert H	Topeka	Jan. 9, 1883.
Houk, L	Hutchinson	Jan. 9, 1883.
Hudson, T. J	Fredonia	June 6, 1883.
Humphrey, H. J.*	Hutchinson	Jan. 12, 1887.
Humphrey, James	Junction City	Jan. 9, 1883.
Hurd, T. A	Leavenworth	June 6, 1883.
Huron, G. A	Topeka	Jan. 8, 1890.
Hutchings, C. F	Kansas City, Kas	June 6, 1883.
Hutchinson, E	Marysville	Jan. 4, 1888.
Jetmore, A. B	Topeka	Jan. 11, 1887.
Jewett, E. B	Wichita	Jan. 8, 1889.
Johns, H. C	Hutchinson	Jan. 8, 1890.
Johnson, J. B	Topeka	June 6, 1883.
Johnson, W. A	Garnett	June 6, 1883.
Johnson, J. G	Garnett	Feb. 3, 1885.
Johnston, W. A	Minneapolis	June 6, 1883.
Johnston, W. T	Paola	Jan. 13, 1886.
Jones, Howel	Topeka	Jan. 8, 1890.
Keeler, Henry	Topeka	Jan. 8, 1890.
Kellogg, L. B	Emporia	Jan. 13, 1885.
Kellogg, Mrs. J. M	Emporia	Jan. 8, 1889.
Kelso, David	Atchison	Jan. 13, 1885.
Kimball, C. H	Parsons	Jan. 11, 1887.
Kimble, Sam	Manhattan	Jan. 25, 1892.
Kingman, Samuel A	Topeka	Jan. 13, 1886.
Larimer, J. B	Topeka	Jan. 8, 1890.
Lawrence, S. S	Guthrie, O. T	Jan. 13, 1886.
Leland, Cyrus A	El Dorado	Jan. 9, 1883.
Lewis, C. C	Phillipsburg	Jan. 13, 1885.
Lewis, Ellis	Osage City	Jan. 9, 1883.
Little, E. C	Abilene	Jan. 8, 1890.
Little, G. F	Junction City	Jan. 8, 1890.
Littlefield, W	Topeka	Jan. 13, 1885.
Lloyd, Ira E	Ellsworth	Jan. 13, 1885.
Loomis, N. H	Topeka	Jan. 25, 1892.
Lovitt, R. A	Salina	Jan. 13, 1886.
Madden, Dennis	Cottonwood Falls	Jan. 8, 1890.
Mahan, John H	Abilene	Nov. 28, 1883.
Maltby, J. C	Minneapolis	Jan. 11, 1887.
Martin, David	Atchison	Jan. 9, 1883.
Martin, John	Topeka	Jan. 9, 1883.
Mason, Rankin	Topeka	Jan. 8, 1890.
May, A. R	Washington	June 6, 1883.
McBride, W. H	Osborne	Jan. 25, 1892.
McCammon, G. W	Valley Falls	Jan. 8, 1889.
McCleverty, J. D	Fort Scott	Jan. 9, 1883.
McClure, J. R	Junction City	June 6, 1883.

*Deceased.

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ROLL OF MEMBERS—CONTINUED.

NAME.	ADDRESS.	ADMITTED.
McFarland, E. A.	Lincoln	Jan. 8, 1890.
McFarland, J. D.	Topeka	June 6, 1883.
McLean, H. A.	Marion	Jan. 12, 1887.
McMullen, J. F.	Winfield	Jan. 8, 1890.
Martin, F. L	Hutchinson	Jan. 31, 1893.
Mead, C. F.	Abilene	Jan. 31, 1893.
Miller, O. L.	Kansas City, Kas.	Jan. 8, 1889.
Milliken, J. D.	McPherson	Jan. 11, 1887.
Mills, F. D.	Kansas City, Kas.	Jan. 13, 1886.
Monroe, Charles	Los Angeles.	June 6, 1883.
Moore, H. Miles	Leavenworth	June 6, 1883.
Moore, Edwin White	Wichita	Jan. 25, 1892.
Nicholson, M. B.	Council Grove	Feb. 3, 1885.
Osborn, S. J.	Wakeeney	Jan. 8, 1890.
Overmyer, David	Topeka	Jan. 8, 1889.
Patchin, A. L.	Stockton	Jan. 9, 1883.
Patterson, W. J.	Lawrence	Jan. 13, 1886.
Peck, George R.	Topeka	Jan. 9, 1883.
Peckham, Chas. J.	Winfield	Jan. 11, 1887.
Perry, W. C.	Fort Scott	June 6, 1883.
Porter, Silas W	Kansas City, Kas	Jan. 3, 1888.
Powell, Omar	Washington	Jan. 3, 1888.
Prescott, J. H.*	Salina	Jan. 9, 1883.
Price, Francis C.	Ashland	Jan. 25, 1892.
Quinton, A. B.	Topeka	Jan. 4, 1888.
Quinton, E. S.	Topeka	Jan. 4, 1888.
Radcliff, H. J.	Cottonwood Falls	Jan. 8, 1890.
Randolph, A. M. F.	Burlington	Jan. 25, 1892.
Redd, George S.	Denver, Colo	Jan. 8, 1889.
Redden, A. L.	El Dorado	Jan. 13, 1885.
Reed, Isaac G.	Wellington	Feb. 3, 1885.
Riggs, S. A.	Lawrence	Jan. 13, 1886.
Rightmire, W. F.	Topeka	Jan. 8, 1890.
Roark, Wm. S.	Sharon Springs	Jan. 25, 1892.
Roberts, John W.	Hutchinson	Jan. 25, 1892.
Robinson, E. F.	Osborne	Jan. 8, 1890.
Robinson, R. G.	Holton	Jan. 11, 1887.
Rossington, W. H.	Topeka	Jan. 9, 1883.
Root, H. C.	Topeka	Jan. 8, 1889.
Scott, Henry W.	Larned	Jan. 8, 1889.
Scott, W. W.*	Emporia	Jan. 9, 1883.
Seabrook, S. L.	Topeka	Jan. 13, 1886.
Sedgwick, T. N.	Emporia	Jan. 8, 1889.
Seaver, B. A.	Troy	June 6, 1883.
Shafer, J. D.	Leavenworth	June 6, 1883.
Shartel, John W.	Guthrie, O. T.	Jan. 25, 1892.

*Deceased.

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ROLL OF MEMBERS — CONTINUED.

NAME.	ADDRESS.	ADMITTED.
Sheridan, John C.	Paola	Jan. 13, 1886.
Simpson, B. F.	Topeka	June 6, 1883.
Sluss, H. C.	Wichita	Jan. 9, 1883.
Smith, C. B.	Topeka	June 6, 1883.
Smith, Charles W.	Stockton	Jan. 13, 1885.
Smith, Clark A.	Cawker City	Jan. 9, 1883.
Smith, Wm. R.	Kansas City, Kas.	Jan. 13, 1886.
Smith, W. W.	Topeka	Jan. 13, 1885.
Snoddy, J. D.	Pleasanton	Jan. 9, 1883.
Spencer, Chas. F.	Topeka	Jan. 4, 1888.
Spencer, James M.	Topeka	Feb. 3, 1885.
Stackpole, Henry W.	Clay Center	Jan. 20, 1891.
Stambaugh, W. S.	Abilene	Jan. 20, 1891.
Stephens, N. T.*	Lawrence	Jan. 9, 1883.
Stevens, Hiram	Paola	Jan. 13, 1886.
Stillwell, L.	Erie	June 6, 1883.
Strang, J. C.	Guthrie, O. T.	Jan. 9, 1883.
Sturgis, F. W.	Concordia	Jan. 9, 1883.
Summerfield, M.	Lawrence	Jan. 4, 1888.
Sutherland, J. W	Neodesha	June 6, 1883.
Taylor, Irwin	Chicago, Ill.	Jan. 13, 1886.
Thacher, S. O.	Lawrence	Jan. 9, 1883.
Thompson, J. F.	Sabetha	Jan. 25, 1892.
Thompson, L. H.	Norton	Jan. 8, 1890.
Thompson, R. F.	Minneapolis	Jan. 25, 1892.
Tillotson, D. C.	Topeka	Jan. 8, 1889.
Tomlinson, J. C.	Atchison	Jan. 13, 1886.
Troutman, J. A.	Topeka	Jan. 12, 1887.
Valentine, D. M.	Topeka	Jan. 9, 1883.
Vandeveer, G. A.	Kansas City, Mo.	Jan. 8, 1890.
Vandivert, S. W.	Kinsley	Jan. 25, 1892.
Waggener, B. P.	Atchison	June 6, 1883.
Wagstaff, W. R.	Paola	Jan. 9, 1883.
Wall, T. B.	Wichita	Jan. 8, 1890.
Walrond, Z. T.	Muscogee, I. T.	Jan. 11, 1887.
Ware, E. F.	Fort Scott	June 6, 1883.
Waterbury, Ed. S.	Emporia	Jan. 13, 1885.
Webb, L. J.*	Topeka	Jan. 4, 1888.
Webb, W. C.	Topeka	Jan. 9, 1883.
Webb, W. D.	Atchison	Jan. 13, 1885.
Webster, Chas. W.	McPherson	Jan. 25, 1892.
Welch, R. B.	Topeka	Jan. 8, 1890.
Wells, Abijah	Seneca	Jan. 8, 1889.
Wheat, L. B.	Leavenworth	June 6, 1883.
White, J. M.	Howard	June 6, 1883.
White, T. J.	Kansas City, Kas.	Jan. 20, 1891.
Whiteside, H.	Hutchinson	Jan. 20, 1891.
Wilcockson, K. E.	Oakley	Jan. 8, 1890.
Wilder, George C.	Manhattan	June 6, 1883.

* Deceased

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ROLL OF MEMBERS — CONCLUDED.

NAME.	ADDRESS.	ADMITTED.
Williams, A. L.	Topeka	Jan. 31, 1893.
Williams, F. L.	Clay Center	Jan. 31, 1893.
Winslow, C. S.	Marion	Jan. 20, 1891.
Wolfe, Eugene.	Topeka	Jan. 25, 1892.
Wood, O. J.	Topeka	Jan. 25, 1892.

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Eleventh Annual Meeting

OF THE

BAR ASSOCIATION

OF THE

State of Kansas.

Held in the City of Topeka, January 24 and 25, 1894.

CRANE & CO., TOPEKA.

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ELEVENTH ANNUAL MEETING

OF THE

BAR ASSOCIATION.

OF THE

STATE OF KANSAS.

Held in the City of Topeka, January 24 and 25, 1894.

TOPEKA, KANSAS:
CRANE & COMPANY, PRINTERS.
1894

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Officers for the Year 1894.

PRESIDENT,	J. D. MILLIKEN.
VICE-PRESIDENT,	F. L. MARTIN.
SECRETARY,	C. J. BROWN.
TREASURER,	HOWEL JONES.

Executive Council.

H. L. ALDEN, CHAIRMAN.

SAM. KIMBLE, T. L. BOND,

J. W. GREEN, E. W. MOORE.

Delegates to American Bar Association.

T. J. WHITE, R. B. WELCH, H. WHITESIDE.

Delegates to National Bar Association.

F. P. HARKNESS, W. C. PERRY, W. H. ROSSINGTON.

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Officers of Previous Years.

Officers for the Years 1883-4.

President.....ALBERT H. HORTON. | *Secretary*.....W. H. ROSSINGTON.
Vice-President. N. T. STEPHENS. | *Treasurer*.....D. M. VALENTINE.

Executive Council.

D. M. VALENTINE, *Chairman*, JAMES HUMPHREY, DAVID MARTIN,
J. H. GILLPATRICK, FRANK DOSTER.

Officers for the Year 1885.

President.....ALBERT H. HORTON. | *Secretary*.....W. H. ROSSINGTON.
Vice-President. W. A. JOHNSTON. | *Treasurer*.....D. M. VALENTINE.

Executive Council.

D. M. VALENTINE, *Chairman*, JAMES HUMPHREY, DAVID MARTIN.
E. S. TORRANCE, L. HOUK.

Delegates to American Bar Association.

A. S. EVEREST, A. L. REDDEN, JAMES HUMPHREY.

Officers for the Year 1886.

President.....ALBERT H. HORTON. | *Secretary*.....JOHN W. DAY.
Vice-President. E. S. TORRANCE. | *Treasurer*.....D. M. VALENTINE.

Executive Council.

W. A. JOHNSTON, *Chairman*, JOHN GUTHRIE, A. W. BENSON,
M. B. NICHOLSON, JOHN H. MAHAN.

Delegates to American Bar Association.

DAVID J. BREWER, W. H. ROSSINGTON, FRED. D. MILLS.

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Officers for the Year 1887.

President.....SOLON O. THACHER. | *Secretary*.....JOHN W. DAY.
Vice-President.HENRY C. SLUSS. | *Treasurer*.. ...D. M. VALENTINE.

Executive Council.

W. A. JOHNSTON, *Chairman*, C. B. GRAVES, ROBERT CROZIER.
GEORGE S. GREEN, T. F. GARVER.

Delegates to American Bar Association.

W. W. GUTHRIE, A. L. REDDEN, T. A. HURD.

Officers for the Year 1888.

President.....W. A. JOHNSTON. | *Secretary*.....JOHN W. DAY.
Vice-President..EUGENE F. WARE. | *Treasurer*.....D. M. VALENTINE.

Executive Council.

JOHN GUTHRIE, *Chairman*, S. B. BRADFORD, GEORGE J. BARKER,
J. W. ADY, J. H. MAHAN.

Delegates to American Bar Association.

SOLON O. THACHER, ALBERT H. HORTON, HENRY C. SLUSS.

Officers for the Year 1889.

President.....JOHN GUTHRIE. | *Secretary*.....CHAS. S. GLEED.
Vice-President.....T. F. GARVER. | *Treasurer*.....D. M. VALENTINE.

Executive Council.

B. F. SIMPSON, *Chairman*, W. W. SCOTT, L. B. KELLOGG,
A. W. BENSON, CHAS. S. HAYDEN.

Delegates to American Bar Association.

J. W. GREEN, J. H. GILLPATRICK, CHARLES MONROE.

Delegates to National Bar Association.

ROBERT CROZIER, M. B. NICHOLSON, ROBERT M. EATON,
GEO. S. GREEN, H. L. ALDEN, J. W. ADY.

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Officers for the Year 1890.

President.....ROBERT CROZIER. | *Secretary*.....C. J. BROWN.
Vice-President...CHAS. B. GRAVES. | *Treasurer*.....HOWEL JONES.

Executive Council.

B. F. SIMPSON, *Chairman*, JOHN GUTHRIE, CASE BRODERICK,
W. W. SCOTT, R. M. EATON.

Delegates to American Bar Association.

GEORGE S. GREEN, L. B. KELLOGG, W. C. PERRY.

Delegates to National Bar Association.

W. A. JOHNSTON, B. P. WAGGENER, A. H. ELLIS,
J. W. GLEED, G. F. LITTLE, J. F. MCMULLEN.

Officers for the Year 1891.

President.....D. M. VALENTINE. | *Secretary*.....C. J. BROWN.
Vice-President..L. HOUK. | *Treasurer*.....HOWEL JONES.

Executive Council.

T. F. GARVER, *Chairman*, E. W. CUNNINGHAM, M. B. NICHOLSON.
J. R. MCCLURE, W. P. DOUTHITT.

Delegates to American Bar Association.

T. F. GARVER, B. P. WAGGENER, J. H. GILLPATRICK.

Delegates to National Bar Association.

W. A. JOHNSTON, A. H. ELLIS, G. F. LITTLE,
ROBERT CROZIER, J. W. GLEED, J. F. MCMULLEN.

Officers for the Year 1892.

President.....T. F. GARVER. | *Secretary*.....C. J. BROWN.
Vice-President.....J. W. GREEN. | *Treasurer*.....HOWEL JONES.

Executive Council.

W. C. WEBB, *Chairman*, C. ANGEVINE, E. W. MOORE,
WINFIELD FREEMAN, A. A. HARRIS.

Delegates to American Bar Association.

JAMES HUMPHREY, F. P. HARKNESS, J. D. MILLIKEN.

Delegates to National Bar Association.

T. N. SEDGWICK, DAVID OVERMYER. S. W. VANDIVERT.

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Officers for the Year 1893.

President.....JAMES HUMPHREY. | *Secretary*.....C. J. BROWN.
Vice-President..H. L. ALDEN. | *Treasurer*.....HOWEL JONES.

Executive Council.

J. D. MILLIKEN, *Chairman*, N. H. LOOMIS, A. H. ELLIS,
SAM. KIMBLE, H. W. GLEASON.

Delegates to American Bar Association.

A. L. WILLIAMS, M. B. NICHOLSON, A. J. ABBOTT.

Alternates.

F. L. WILLIAMS, T. A. HURD, C. B. GRAVES.

Delegates to National Bar Association.

R. M. EATON, W. A. S. BIRD, C. W. SMITH.

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Minutes of Eleventh Annual Meeting.

TOPEKA, KANSAS, January 24, 1894.

The eleventh annual meeting of the Bar Association of the State of Kansas was called to order at 4 o'clock P. M., in the hall of the House of Representatives, with the President, James Humphrey, in the chair.

The reading of the minutes of the last meeting was dispensed with.

The Executive Council, through its chairman, J. D. Milliken, reported to the Association the names of the following applicants for membership, and recommended their election: C. B. Hamble, L. H. Perkins, A. L. Berger, Ralph Ingalls, E. A. McMath, W. H. Morris, J. T. Pringle, A. J. Bryant, Robert Brock, William Thomson, James M. Rees, H. C. Solomon, R. M. Pickler, George W. Clark, McCabe Moore, S. H. Allen, David W. Mulvane, R. B. Spilman, J. W. Davis, W. H. Bishop, and Bruno Hobbs.

The report of the Executive Council was adopted, and the parties named were duly elected members of the Association.

The special committee to investigate the work being done by the law department of the State University presented the following report, which was received by the Association and ordered to be printed with the published report of this meeting:

We, your committee appointed by the President of the Association at its last meeting to visit the Law School of the Kansas State University and to report at this meeting as to what the school is and what work it is doing, and its various needs, if any, beg leave to submit the following:

Your committee visited the school at Lawrence on Tuesday, January 23d, and found the school located in what is known as the Old North College, which is quite a large and commodious building. The first floor of the building is

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given up to the law library, two reading and study rooms, and a coat-and-hat room. On the second floor are two lecture or recitation rooms and the offices of the Dean and Librarian.

We observed that there was a very well arranged and well kept library, which is open and accessible to all students, and in it we noted the following books belonging to the State: A full set of American Reports, full set of American Decisions, American State Reports, Ohio Reports, Ohio State Reports, Iowa Reports, Wisconsin Reports, Kansas Reports, Federal Reporter, Atlantic Reporter, Pacific Reporter, Northeastern Reporter, Southeastern Reporter, Northwestern Reporter, Southwestern Reporter, Southern Reporter, and four hundred volumes of good text-books.

To this list the Dean of the department, Prof. J. Green, has added his private library, and placed it at the disposal of the students, and in this private library are the following books: Complete set of United States Reports, New York Reports, Barbour's Reports, New York Chancery, Massachusetts Reports, California Reports, Pennsylvania and Pennsylvania State Reports, Michigan Reports, New York Common-Law Reports, Abbott's Practice Reports, Lansing's Reports, Howard's Practice Reports, and two hundred volumes of good text-books.

Thus it will be seen that the books belonging to the State number ten hundred fifty-three volumes, and the number placed at the disposal of the students by the kindness of Prof. Green is ten hundred forty-nine volumes.

FACULTY.

The faculty consists of J. W. Green, Dean, who instructs in the subjects of Constitutional Law, Contracts, Evidence, Corporations, and Commercial Paper; J. W. Gleed, who instructs in the Law of Real Property; W. B. Brownell, who instructs in Domestic Relations, Criminal Law, Agency, and Bailments; Solon O. Thacher, who instructs in Equity Jurisprudence; A. W. Benson, who instructs in Pleading and Practice; S. A. Riggs, who instructs in Torts; D. M. Valentine, who instructs in Wills and Administration. Of this corps of instructors Professors J. W. Green and W. B. Brownell are constantly engaged, carrying the work through the entire year, while each one of the other instructors enumerated instructs only in the subject indicated, occupying from four to six weeks each in covering the subject taught, giving a recitation and lecture each day in the week until the subject is finished.

COURSE OF STUDY.

The course of study embraces two years, and the instruction is so arranged that each class is pursuing daily some two of the subjects comprised in the course.

The method of instruction adopted is largely the use of the text-book. The students are assigned lessons covering from forty to fifty pages daily. They then come together in the class-room, and the principles as they arise in these lessons are discussed informally between the professor and the students, the aim of the instruction being to acquaint the student with the principles that

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underlie the subject taught. The students are also cited to and required to read a few leading cases illustrating each principle.

MOOT COURTS.

Two moot courts are held weekly, presided over by an instructor. A statement of facts, perhaps taken from some actual case, is given to the students, and they are assigned usually two on a side, and are required to carefully prepare and argue the case.

STUDENTS.

This year the school has an attendance of eighty members, forty-six in the junior and thirty-four in the senior class. We attended recitations under the Dean of the department and Hon. D. M. Valentine of Topeka, and met a number of the students, and were very favorably impressed with their general appearance and deep interest manifested in their work. In 1880 there were in attendance twelve students, and in 1893 there were graduated from the school forty-two men. The attendance has increased each year, and in the whole thirteen years there have been graduated two hundred and five men, and the corps of instructors has been increased from one to seven.

In our opinion, the school should receive the hearty indorsement of this Association, and is an institution in which every Kansan, and particularly the members of the Kansas Bar, should feel a deep interest, and should endeavor by personal influence to increase the attendance and build up the school until it becomes what the University proper already is, the best west of the Mississippi.

We are informed that students who have been refused graduation from this school by the faculty on account of having failed to pass the examinations, have gone out before the courts of the State and taken the examinations, and have been admitted to practice, at the end of their junior year; and as we are confident that the standard required by this school is much higher than that demanded by examining committees throughout the State, we consider that it would be a fitting compliment to the work done in this school that this Association use its influence to secure an amendment of our statute in relation to admission to the bar, permitting the student who has completed the course of study prescribed by the Law School, and has received a diploma therefrom, to be admitted to practice law in the courts of this State without further examination. And we would also further recommend that this Association use its influence with our legislators to secure a liberal appropriation to be used in increasing the law library.

F. L. MARTIN.
C. S. GLEED.
JOHN W. ROBERTS.

The special memorial committee to prepare and present suitable resolutions upon the death of Joel Holt, presented the following report, which by unanimous vote was received and

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adopted, and ordered to be printed with the published proceedings of this meeting:

TOPEKA, KANSAS, January 24, 1894.

MR. PRESIDENT: The regular memorial committee having failed at the last annual meeting to present any minute or resolution concerning the death of ex-Judge Joel Holt, who in his lifetime was a member of this Association, a special memorial committee was appointed to present suitable resolutions upon his death. That committee beg leave to submit the following report:

Again are we reminded of the brevity and uncertainty of life by the death of our friend and brother, Joel Holt, which occurred at Guthrie, Oklahoma Territory, on the 27th of April, 1892, in the forty-ninth year of his age; and again is the remorseless and relentless character of death illustrated in the removal in his prime of a man so useful, so amiable, and so lovable.

He was buried at Beloit on Sunday, May 1, 1892. The members of the Supreme Court, the members of the bar at Beloit, and many of the prominent lawyers from the counties adjoining Mitchell, attended his funeral in the Presbyterian church of that city, of which church for many years he had been an active member, and in which church since 1875 he had held the office of ruling elder. But a small number of those present at the funeral could gain admittance in the church, the attendance being the largest ever witnessed at a funeral in that city.

He was a member of this Association, and it becomes us to pause a moment by his vacant chair and recall the face, form and something of the character of one whom it was a pleasure to call "friend." He was born in New Hampshire, in October, 1843. The environment of his boyhood was that of morality, temperance, industry, integrity, and patriotism, basic qualities upon which to build a sterling manhood. Surrounded by these influences in his youth he absorbed them as a part of his being, and they clothed him about as a garment, not merely as a habit of life subject to change under different influences, but immutably fixed, as a part of his very self. His morality accompanied him ever, not of a sombre kind that hath an appearance of self-sacrifice and deprivation of harmless pleasures, but it was of a bright and cheerful character, adorning and beautifying his life and making it enviable.

His patriotism carried him into the war to save the Union, where he served as a soldier with courage and credit. Soon after the war closed he came to Doniphan county, in this state, and continued the practice of his profession. He was elected County Attorney of that county, and well and faithfully discharged all its duties. After the expiration of his term of office he moved with his family to Beloit, Mitchell county. He continued to reside there until a few months before his death, when, believing that a better field for the practice of law was offered him in Oklahoma, he opened an office at Guthrie. His family, however, had not left Beloit at the time of his death. For eight years he was Judge of the Fifteenth Judicial District. He was a regent of the State University, and for three years one of the Commissioners of the Supreme Court. Into his public life he carried the same qualities that characterized his private life.

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He was the just judge, with all that that implies. His decisions were based upon the principles of immutable justice, and exemplified his admirable qualities as a man, and it was his delight to satisfy justice with a judgment dictated by equity. He was a gentle and loving father and husband, a kind and helpful neighbor, a patriotic and useful citizen, a careful, able and conscientious lawyer, a just judge, and everywhere and always a Christian gentleman.

It seems fitting that, knowing him as we did, we should express our appreciation of his life and character, though words can feebly do so. Therefore,

Resolved, That in the death of our brother, Joel Holt, his family have lost a loving father and trusted guide; the State one of its most useful and loyal citizens, and the bar of Kansas one of its ablest members and brightest ornaments, and all who knew him a kind, a genial and a helpful friend.

Resolved, That the foregoing resolution be spread upon the records of this Association, and that a copy thereof be transmitted by the Secretary to the family of our deceased brother.

ALBERT H. HORTON.
W. A. JOHNSTON.

The Association adjourned till 7:30 P. M., at which hour it reconvened at Representative Hall.

JANUARY 24 — EVENING SESSION.

The evening session of the Association was opened by prayer by Rev. A. S. Embree.

The annual address of the President, on the Position and Influence of Lawyers, was delivered by James Humphrey.

Henry Wade Rogers, LL.D., President of the Northwestern University, delivered an address on the Law-Making Power.

On motion of N. H. Loomis, the following committee was appointed to nominate to the Association, officers for the ensuing year: N. H. Loomis, R. B. Spilman, H. W. Gleason, Lucien Earle, and A. H. Horton.

The Association adjourned till to-morrow at 9:30 A. M., at which hour it reconvened at Representative Hall.

JANUARY 25 — MORNING SESSION.

Howel Jones, the Treasurer of the Association, presented

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the following report, which, having been found correct by the Executive Council, was received and adopted:

REPORT OF TREASURER. January 20, 1894.

Balance on hand last report, January 31, 1893		$286 88
Receipts since January 31, 1893:		
Admission fees, January 31, 1893		25 00
Annual dues of 1893, from various members		284 00
Total receipts from members		$595 88
Expenditures (vouchers attached for same.)		
October 5, 1893.—Crane & Co., printing proceedings		$99 25
October 7, 1893.—C. J. Brown, for postage		10 00
October 13, 1893.—Stamps		6 00
November 11, 1893.—Postal cards		1 00
November 17, 1893.—Crane & Co., printing 100 postal cards		1 00
Hall & O'Donald, 300 circulars		2 00
January 12, 1894.—Stamps		4 00
Total		$123 25
Total receipts	$595 88	
Total expenditures	123 25	
Balance on hand to date		$472 63

Respectfully submitted.

HOWEL JONES, *Treasurer.*

The following letter from Bishop Vincent, who had been invited to take part in the proceedings of this meeting, was read to the Association, and ordered to be printed with the published proceedings:

TOPEKA, January 23, 1894.

MY DEAR JUDGE HORTON: My plans have been fixed for several days, and an engagement in Kansas City to-morrow compels me to leave early in the morning. To-morrow evening I go from Kansas City to Chicago, Toronto, and Boston, to be absent a month.

I am exceedingly sorry to be absent from Topeka during the visit of my old and honored friend, President Rogers. I did not learn of his coming until I read your letter to-day. I appreciate your kindness in seconding the invitation of the Chairman of the Bar Association, and I shall be most happy to accept but for this necessary absence.

I am in full sympathy with the thought expressed by Mr. Milliken, that "to the lawyer who fully comprehends the privilege and responsibility of his exalted position, his office is equally sacred" with that of the Christian ministry, "and he realizes that their aims and purposes are the same, namely—the up-

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lifting and betterment of humanity." Indeed, I think I can show that as popular opinion now runs, a lawyer has greatly the advantage of the minister, when with genuine faith in the verities of the Christian religion, he represents it in his practical, business-like way, free from all temptation to cant and perfunctoriness.

Trusting that your meeting may be in every way successful, and regretting that I shall not be able to share in its pleasures and advantages, I remain,

Faithfully yours, JOHN H. VINCENT.

R. B. Spilman delivered an address on Naturalization Laws. The address of Judge Spilman was followed by a lengthy discussion of the general subject of Naturalization, led by A. J. Abbott and G. F. Grattan.

The Association adjourned till 2 o'clock P. M., at which hour it reconvened in Representative Hall.

JANUARY 25 — AFTERNOON SESSION.

On motion of H. W. Gleason, Hon. Henry Wade Rogers was, by unanimous standing vote, made an honorary member of the Association.

The memorial committee presented the following resolutions upon the death of James C. Maltby, which were adopted and ordered to be made a part of the published proceedings of this meeting:

To the Kansas State Bar Association: We have to report to the Association the death of our brother, James C. Maltby, of the Ottawa county bar. He died April 27, 1893, of consumption, at the age of thirty-four years. He was a close student, a good lawyer, and a man of undoubted integrity. His physical constitution was never vigorous, and in his entire preparatory and professional life he was hindered and handicapped by the weakness which so prematurely proved fatal. The whole thirty-four years of his life were spent in Kansas. He attended law school at Ann Arbor, Michigan, and read law in the office of Garver & Bond, at Salina, Kansas. At the time of his death he had been practicing law in Ottawa county for eight years, and had been for several years the junior member of the firm of Chipman & Maltby.

He never did anything tending to bring reproach upon the bar, and was a worthy and respected member of this Association.

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We report the following resolution to express the sense of this Association concerning his death:

Resolved, That we deplore the death of our brother, James C. Maltby, and hereby express our sense of his worth as a man, and his diligence, thoroughness, honesty and faithfulness as a lawyer.

HENRY KEELER, *Chairman*.

It was further ordered that a copy of the foregoing report of the Memorial Committee be sent by the Secretary to the family of the deceased.

The Committee on Amendments to Laws presented the following report, which was received by the Association and ordered printed with the proceedings of this meeting.

TOPEKA, KANSAS, January 23, 1894.

To the Bar Association of the State of Kansas, Mr. President, and Gentlemen: The undersigned, who was appointed by your President as one of a committee of five upon the amendment of the laws, and who was designated by your President as the chairman of the said committee, would respectfully submit the following:

The said committee was composed of the Hon. J. Jay Buck of Emporia, Hon. Joseph Ady of Newton, Judge J. B. Johnson of Topeka, and A. W. Benson of Ottawa, and the undersigned, as he, the undersigned, was advised and informed by your President. A short time after receiving the information of the appointment of the said committee, the undersigned corresponded with the several members of the said committee, with a view of determining upon some date for a meeting of the said committee, and with a view of fixing some place of meeting. The answers which were received from the various gentlemen constituting the committee were such that no time or place was agreed upon, no two of the committee being in agreement as to any such matter. All, however, exhibited a willingness to serve upon the committee according to the best of their ability and convenience. Later, the undersigned again wrote to each member of the committee, requesting them to meet in Topeka on the 23d of January, 1894, and to come prepared with statements of their views with respect to the subject of the amendment of the laws, so that a report might be made on behalf of the committee to your honorable body. In reply thereto, Judge Buck has written that he could not be present, but stated to some extent his views upon the subject. Judge Benson has written in like manner and to like effect. Mr. Ady has not been heard from at all. Judge Johnson has orally stated to the undersigned that he was in agreement with the undersigned upon several propositions for the amendment of the laws.

In comparing the views presented to the undersigned as aforesaid, it appears that a majority of the committee are not in accord, except in a very few matters. Three of the committee are in favor of a constitutional convention, and of a general revision and codification of the laws.

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Inasmuch, however, as no meeting of the committee has been secured, and no opportunity had to canvass various propositions which one or more of the members may favor; and inasmuch as any report upon these would necessarily take the form of an individual recommendation of individual members of the committee; and inasmuch as the undersigned would deem it presumptuous in him to assume to report to this Association his own individual views with respect to the necessity of the amendment of the laws, which it would seem would be necessary and proper, provided the individual views of others were presented; and inasmuch as the undersigned as chairman has no authority on behalf of the committee or a majority thereof, to make any other or further report than hereinbefore set forth; and inasmuch as a minority report would not be in order where there is no action by a majority; and inasmuch as the undersigned has put forth his best endeavors to secure a report of said committee without avail, he, as chairman, and on behalf of said committee, respectfully submits this as his report to your honorable body, and asks to be discharged from further duty as chairman of the said committee, and that the said committee be discharged from further duty. Very respectfully,

DAVID OVERMYER, *Chairman.*

A. A. Godard delivered an address on Municipal Bonds.

H. Whiteside delivered an address on the question, Should the Present System of Jury Trials be Abolished in the United States?

C. B. Graves delivered an address upon the same subject, and in response to the paper of Mr. Whiteside.

R. B. Welch presented the following resolution, at the request of Thomas P. Fenlon:

Whereas, It is an open and notorious fact that the Supreme Court of the State, owing to the immense volume of business before it, is physically unable to keep up with its docket; and

Whereas, This state of affairs makes it impossible that the cases before it can be reached for argument and final decision within three or four years from the filing of petitions in error; and

Whereas, This condition of affairs is a delay of justice which is equivalent to, in many cases, a denial of justice: therefore, be it

Resolved, That the President of this Association be authorized and directed to appoint a committee of five of the members of this Association, whose duty it shall be to draft such proposed legislation, or action as will remedy this evil, and result in a reasonably speedy determination of all litigation in that court; and that such action shall be submitted to the next Legislature for its action; and that said committee report to this Association at its next annual meeting what action it has taken under this resolution, with a copy of the bill or resolutions prepared by it under this proceeding.

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After much discussion, the resolution was adopted, and the following committee appointed to carry out its provisions: R. B. Welch, Thomas P. Fenlon, M. B. Nicholson, Wm. Thomson, and H. L. Alden.

On motion of N. H. Loomis, the following committee was appointed to report to the next meeting of this Association a bill to be presented to the Legislature, regulating admissions to the Bar in the State of Kansas: N. H. Loomis, Frank Doster, and John H. Mahan.

The committee on nominations of officers for the ensuing year presented the following report.

OFFICERS FOR THE YEAR 1894.

President—J. D. Milliken.

Vice-President—F. L. Martin.

Secretary—C. J. Brown.

Treasurer—Howel Jones.

Executive Council—H. L. Alden, Chairman; Sam Kimble, J. W. Green, T. L. Bond, E. W. Moore.

Delegates to American Bar Association—T. J. White, R. B. Welch, H. Whiteside. *Alternates:* L. S. Ferry, Charles W. Webster, T. B. Wall.

Delegates to National Bar Association—F. P. Harkness, W. C. Perry, W. H. Rossington.

These nominations were unanimously ratified by the Association.

The following standing committees were appointed by the President, J. D. Milliken:

Judiciary Committee—D. M. Valentine, R. F. Thompson, Francis C. Price, C. F. Hutchings, Stephen H. Allen.

Committee on Amendments to Laws—T. F. Garver, Frank Doster, Lucien Earle, Thos. P. Fenlon, John W. Roberts.

Memorial Committee—John Guthrie, J. R. McClure, David Martin.

The addresses delivered before the Association at this meeting appear in the following pages.

Adjourned.

C. J. BROWN, *Secretary.*

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ADDRESSES.

THE POSITION AND INFLUENCE OF LAWYERS.

BY JAMES HUMPHREY, PRESIDENT.

I have conceived the idea that it would not be wholly devoid of interest to devote this address to a discussion of the position and influence of the American lawyer; passing, however, his strictly professional relations, and entering upon an inquiry into his relations to and influences upon the affairs of the great commonwealth.

It is not to be assumed that the labors of the lawyer, even within the sphere of professional duty, are without influence beyond the immediate object they seek to compass. They are performed for the most part before the eyes of the public, in the forum of public justice, and they seek to restore harmony between conflicting rights and duties as these are asserted or denied by litigant individuals, and thus assert the supremacy of the state over the individual will.

Besides the direct results, the moral effect must be profoundly impressive. The foundation of civilization rests in association. Man isolated is feeble and unprogressive; in the association of numbers lies power and progress. The cooperation of many for a common purpose implies the subordination of the individual will, and many personal interests, to those means deemed necessary to the accomplishment of such purpose. It is the function of the lawyer, whether as judge or advocate, to apply those means of legal discipline to members of the community which render coöperation in the social body harmonious and complete, and strengthen the national bond.

Of all the employments that enlist the energies of men, none are more dignified and useful, and none so indispensable to the well-being and perpetuation of society, as the work that devolves upon the lawyer. He is directly concerned with the workings of that part of the governmental fabric for the efficient and certain operation of which all the rest exists. He is set for the vindication and enforcement of those rights which rest in the public laws, and to render certain that measure of protection which they were intended to afford.

Yet, there are other duties and obligations which the lawyer owes to the state, which are, if possible, of still greater importance. The exposition and application of the rules of the law, in their true spirit and purpose, to the infinitely varied acts and conduct of mankind, whose quality and results must be

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brought to the test of reciprocal obligations and rights, demand an enlightened and resolute spirit, and when efficiently performed they constitute a service of inestimable value.

No state or nation is finished so as to be incapable of further progress until it is ready to die, and is simply waiting for the summons that shall challenge its right to existence. No state or nation, no matter how auspicious the circumstances of its birth, however firm its footing upon the earth may seem to be, however well adapted its laws and administration may appear to the needs, situation, interests, and the spirit and genius of the people for whom it is organized, can remain stationary. It must progress or retrograde. Its permanence and its highest usefulness in meeting and serving the true ends of government will depend upon the manner of its unfolding, whether it shall observe the laws of an orderly development, or whether it shall be wrenched from its proper direction and purpose to serve designs and ends foreign to its spirit, and contrary to its manifest destiny.

It is not sufficient, nor is it all that is comprehended in government, to provide for the business part of the arrangements of society. This is at all times, doubtless, of first-rate importance, and requires rare and delicate skill, guided by a very varied and extended knowledge. For you may retard and obstruct where it is intended to accelerate necessary progress. You may aim to compass a present good at the expense of permanent injury. Legislation that is not congenial to the spirit and in line with the aspirations of the nation will be of ephemeral duration. Its only usefulness will consist in supplying that experience and discipline which follow as the result of mistakes. There is a philosophy of law, but it is founded upon and is the outgrowth of the national character.

Every nation that has arisen upon the earth that has become an enduring force in the march of the world's civilization, that has been able to accomplish a distinct purpose or pursue an enduring career, has been endowed with strong national characteristics; with an organic spirit that gave birth to its aspirations and determined the character of its development. Every nation possesses its own peculiar characteristics, and no two seem to be alike in this respect. So true is this, that nations which sprang from the same race, whose language, laws and literature are similar, while they may possess many features common to both, each has its idiosyncrasy which differs from all others. Each has its mission; and the nature of its mission, that is the rôle it is destined to play in the unfolding of human nature, is determined by the idiosyncrasy, the peculiar characteristics and spirit which it has taken to itself.

The American people possess many traits common to themselves and the English race from whom the predominant race in America sprang. They are both intensely practical, inventive in the adaptation of the forces of nature to the industrial and useful arts. Neither is strongly wedded to ceremonial forms, nor fanatical in its adherence to creeds. They are inclined to be more moral than pious. They both pursue with unceasing activity material gain through trade and commerce, and possess the ability to accumulate wealth

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more rapidly than any of the other races and nations of the earth. Their abounding wealth of strength and courage makes them warlike, but they wage war for practical ends, not from love of war or its glory.

A further trait common to both is the power and genius for organization, to form extensive and compact political confederations, and like attachment for liberty and law.

The English passion for organization, for wealth and power, finds a theater for action in the discovery and colonization of new regions, the creation of government for, and annexing other lands, introducing the elements of civilization into barbarous wilds, and renovating the decayed civilizations of the old world. Their situation, circumstances, and the peculiarities of the national intellect, fit them for this work. Their confined, insular position, coupled with their restless activity, while affording protection from foreign foes, enabled them to gain the mastery of the seas, and compelled the adoption of an expansive policy, and led to a hardy, adventurous and enterprising national career. Moreover, there was nothing in the British constitution, laws or traditions which required that the different parts of the empire should be consistent or homogeneous in constitution or form. It might erect whatever character of government the situation seemed to require in the annexed territory, either an oligarchy or a democracy. The government of Britain was not hampered with any abstract theories of human rights, as that governments derive their just powers from the consent of the governed. It did not trust itself to the light of an idea, but rather to the guidance of facts, experiment, usages, precedents. To give the initiatory to new nations, and to impart fresh energy to enfeebled races, seems to be in a special sense the mission of England.

The American people undertook to build a nation upon a colossal scale and upon a new foundation. This people too have a mission, I think the most important ever committed by Divine Providence to the hands of a nation. That mission is to organize the rights of man. The spirit and genius of the American people is political and religious liberty, based upon a civil and legal equality.

In the work of founding or creating the national spirit, American lawyers have borne an important part. That spirit was not born in a day. The nation started upon its career freighted with Carolinians, Georgians, Virginians, New-Yorkers, Jerseymen, New-Englanders and the like. It required time and the final application of the supreme test to overcome the idea that the government was the national organ of associated States, rather than the organic embodiment of the unity of the people.

To the philosophic mind of De Tocqueville the national sentiment seemed too weak, even after more that fifty years of national life, to preserve the integrity of the Union against the determined dissent of one or more of the States. Indeed, at the time he wrote his justly celebrated work on American Democracy, it was still a question of debate in the legislative halls of the nation whether the Union was a mere confederacy of consenting States, or the root and center of national life.

"The legislators who formed the constitution of 1789," says that author,

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"endeavored to confer a distinct and preponderating authority upon the Federal power. But they were confined by the conditions of the task which they had undertaken to perform. They were not appointed to constitute the government of a single people, but to regulate the association of several States; and whatever their inclinations might be, they could not but divide the exercise of sovereignty in the end."

In this division the writer thought that the largest, and, as it affects the citizen, the most important part of the sovereignty, fell to the several States. He says: "In this division of the rights of sovereignty the share of the Union seems at first sight to be more considerable than that of the States, but a more attentive investigation shows it to be less so. The undertakings of the Union are more vast, but their influence is more rarely felt. Those of the provincial governments are comparatively small, but they are incessant, and they serve to keep alive the authority which they represent. The Government of the Union watches the general interests of a country; but the general interests of a people have a very questionable influence upon individual happiness, while provincial interests produce a most immediate effect upon the welfare of the inhabitants. The Union secures the independence and greatness of the nation, which do not immediately affect private citizens."

In a similar vein the argument against a probability of a permanent endurance of the American Union is conducted by a contrast of the powers of the respective States and the government of the Union, and the influence which these exert upon the feeling and sentiment of patriotism.

In all his ingenious reasoning De Tocqueville seems to have overlooked several facts of prime importance. Besides underestimating some of the elements of strength in the national constitution, he regarded the States as having had simply a provincial existence of long standing; that the thoughts, habits, traditions, feelings and interests of the people were essentially provincial, possessing no instinct of national aspiration beyond that divided patriotism evoked by the States. That when the foundation of the constitution was laid, in 1789, the sense of nationality had first to be awakened, and its future growth and development would be determined by the strength or weakness of the various interests and motives that should appeal to it, and move it in this or the other direction; and he believed that the balance of preponderating social and political forces were with the States rather than with the General Government.

But states, like individuals, can only be thoroughly understood by taking account of their antecedent history. The American States until recently had been part and parcel of a nation which had stood the shock of centuries: the most aggressive and progressive and egoistic nationality then in existence. These States had successfully resisted encroachments upon the traditional liberties of Englishmen, and in the resistance had snapped the bonds that bound them to the empire. There was no lack of national feeling in Americans, but it required a new object. The great problem of statesmanship then was the unification of this feeling and spirit, and its concentration upon a common purpose and object, the creation of a scheme of national government which should

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absorb the national spirit and give scope to its aspirations. It is unnecessary that I should point out to an assemblage of lawyers with what consummate skill this work was entered upon in the foundation of the national constitution, chiefly the work of American lawyers. And yet, no one who is even superficially acquainted with the political history of this country can fail to observe that for the greatest period since its existence, it so far failed to command undivided allegiance as to render it doubtful whether its supremacy would be enduring. But the steady growth of the spirit of nationality among the people prepared the nation to gird up its loins for its great task when the supreme test came in 1861.

Numerous influences contribute to the formation and growth of the national spirit, but chief among these are the nation's laws. A nation registers its character, its life and history, in its laws.

In the formation of the constitution of the United States the general and comprehensive terms used in conferring the powers of government left ample room for the expansion of those powers commensurate with the growth and progress of the country in all matters of national concern. It still depended upon the quality of the spirit and intelligence which should be brought to the interpretation of that instrument, as it respected the powers which the Government might justly claim to be clothed with, whether the fullness of its purpose should be realized: whether the people should cease to be provincial—to be Virginians, Carolinians, New-Yorkers, New-Englanders, and the like—or all become Americans.

The Supreme Court of the United States, illustrious throughout its history for talent, virtue, and patriotism, has established upon the foundation of the constitution a superstructure of national jurisprudence, made solid and compact by sound and comprehensive reasoning, adorned by learning and a high order of eloquence; and while rendering the most effective service to the cause of well-regulated liberty, it has imparted direction and strength to the national spirit.

In the great judgments of Marshall, in the intense national spirit of Clay, in the profoundly reasoned and inspiring orations of Webster, you may read the ripening sentiment of Americanism.

It is of immense importance that the institutions of the country should be so framed as to be congenial to the life of the nation, and it is of no less importance that its life and spirit should be guided to its true and harmonious development.

It will always be one of the functions of lawyers to be an important and powerful factor in this work, and it may be useful to indicate the general line or direction it should be expected to take. And this is to be ascertained chiefly by inquiring, What is the national ideal? For what does the nation stand?

The founders of the Government started out with the bold declaration that all men were created equal, and were given by the Creator certain rights which were inalienable, to wit: the rights to life, liberty, and the pursuit of happiness.

In the bill of rights embraced in the constitution of this State the principle

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of the declaration is paraphrased thus: "All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness." It was further declared to be the chief object of government to secure and preserve these rights.

If the institution of a democratic form of government sufficed for these ends, the goal was reached when that was established. But while this was a great advance, it remains to be determined whether the kind or degree of liberty it established, and the pursuit of happiness it permitted, were the best. There are many degrees of liberty, and many ways to pursue happiness, some of which are good, and others bad. One of the purposes of government is to distinguish between these. The difficulty is by no means solved by referring these rights and liberties to a natural origin, or as endowments of the Creator.

The question still recurs, What are they?—and what do they connote? Is there any absolute rule by which you can determine them?

By the moral sense, say some. But the moral sense of mankind is never a fixed quantity. It has sanctioned at different times polygamy, slavery, despotism, and many other things which the moral sense of mankind at other periods has condemned. If there are any absolute or natural rights, mankind has never come to an agreement as to the nature of them.

Historically speaking, the only natural rights and liberties of which we seem to have any knowledge existed in the depths of the primeval forests among primitive men, where each man regulated his own affairs without reference to his fellows, except to kill them when competition in the race for food became too keen. This is called a state of nature; it is a state in which liberty exists in its most perfect form—and this implies anarchy.

But it has been urged that the right to life, and liberty, and the pursuit of happiness, results from the fact that mankind were created equal. If this were the fact, it possesses little real significance, unless in the struggle of life the original equality continued. That there is a vast difference in the mental, moral and physical capacities among mankind, needs no argument. This, however, is by some thinkers but qualifiedly admitted. Thus it is claimed by these that "intelligence differs in individuals only qualitatively, each having thereby his own specialty or genius: in its essence, namely, judgment, it is quantitatively equal in all. Hence it follows," says Proudhon, from whom this quotation is made, "that a little sooner or a little later, according as circumstances shall be more or less favorable, general progress must lead all men from original and negative equality to a positive equivalence of talents and acquirements."

We should hardly expect to find a confirmation of this equality of judgment, or the power of reasoning, in the school-rooms, nor amid the numberless activities that enlist the energies of mankind. It seems to exist only as a datum of the metaphysicians.

But on this idea of original human equality there has been built up an ideal social state by the social philosophers. The same author thus depicts the origin of inequality, and the process through which it is to disappear. Speaking of the commencement of the first phase of economic evolution and intellectual de-

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velopment, he says: "But at this solemn hour of the division of labor, tempestuous winds begin to blow upon humanity. Progress does not improve the condition of all equally and uniformly, although in the end it must include and transfigure every intelligent and industrious being. It commences by taking possession of a small number of privileged persons, who thus compose the *elite* of nations, while the mass continues, or buries itself deeper in barbarism.

"It is this exception of persons on the part of progress which has perpetuated the belief in the natural and providential inequality of conditions, engendered caste, and given an hierarchical form to all societies. It has not been understood that all inequality, never being more than a negation, carries in itself the proof of its illegitimacy and the announcement of its downfall: much less has it been imagined that this same inequality proceeds accidentally from a cause the ulterior effect of which must be its entire disappearance."

In this beautiful dream of a social philosopher, progress is idealized and personified; is represented as selecting from among the mass of humanity a certain privileged few, who, from this accidental cause, become superior to the rest, and upon whom progress bestowed special favors.

Progress has imposed upon herself by this unfortunate capricious selection a gigantic task to repair this error. She is expected to pull the coat-tails of those who have gone too fast and outstripped their fellows, and to urge on the indolent and the laggard. The difference of environment is in some way to be equalized, the stimulant effects of a temperate clime to be transferred to the tropics, the inertia of sluggish brains to be overcome, and a thousand circumstances which tend to favor progress in some and repress it in others are to be swept away by this omnipotent agent, Progress. This process is expected to continue until a mental, moral and physical equilibrium is reached, and the tempestuous winds that commenced to buffet humanity at the first appearance of progress shall have subsided into a dead calm.

There is nothing quite answering to this in the historical development of the race.

Progress makes no capricious selections, but strong men, developed by favoring circumstances, have in all time taken hold upon Progress and moulded her to their purpose.

In the organization and progress of society there is a two-fold development, possessing opposite tendencies. In the first stage the tendency is toward despotism. This is rendered necessary by the predatory habits and the anti-social instincts of man's nature, as these existed before the institution of government. Hence resulted a strong central power to suppress disorder, institute discipline, and suppress every form of individual activity having a tendency to injure the members of the organized group.

In Europe, upon the breaking-up of the Roman Empire, society became again reorganized under the forms of feudalism, a state in which the individual was wholly subordinated to the community, and he was important not as an individual, but only as a part of, or as he became merged in, an institution.

But society grew under this form of organization, intelligence became more

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and more diffused, industrial activities became increasingly diversified. Those powerful restraints upon individual activity, necessary in the first instance to weld men into social organization, were felt by the people in first one direction and then another to be unnecessary, obstructive and harmful to public welfare. Ameliorating changes were from time to time demanded, and as these were introduced the sphere of governmental function was narrowed, and the number of its interferences diminished.

This process continued until we reached the modern doctrine that the individual citizen is the unit of society, and institutions are important only as they contribute to his well-being. This doctrine found full expression in the institution of the American Republic. "Governments derive their just powers from the consent of the governed; and whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness."

So that we are committed to the theory that that form of government which best secures human rights and welfare best vindicates its right to existence. Can we apply any other test than its effect in conducing to the same end to any law that may be enacted?

In accordance with this principle embodied in the declaration, provision was made in framing the fundamental law for state and nation for such changes and amendments as new situations and circumstances should require. Then the genius of the nation leads it toward liberty — not that form of liberty which is anarchy, but in a direction contrary to socialistic tendencies, which imply increased control by government over the actions of individuals, and their subordination to the community. A liberty not founded upon a supposed natural equality, but that quality of civil liberty which rests in law and expresses equal rights under it.

Indeed, the whole history of civilization is a struggle to escape from both these extremes. To efface the irresponsible personality inherent in barbarism, and educe a personality of a higher order upon which governments may rest compact and strong, without impairing the individuality of the component units. A struggle which must continue until we shall reach such an adaptation of government and law to the affairs of society as will compass the welfare of the whole, and of each individual member: until we have discovered that relationship between the whole and its parts which expresses the greatest individual liberty which is compatible with the well-being of society.

Such is the problem which civilization presents to us, a problem which is forever in process of solution but never solved. And since at each stage we must choose between one sort of liberty and another, it remains that the word has no definite or positive meaning. We shall not find it in any abstract formula. We have not attempted to evoke it from the vasty depths of the unknowable as an abstract right, but we have written it firm and deep in the constitution and laws. Civil liberty, then, is the complement of law.

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The development and enlargement of liberty consists in restricting government interference to fewer and fewer objects, to diminish the number of legal restraints upon individual activity.

From the nature of the case, I think it quite impracticable to lay down any precise or definite rule to mark the limit of governmental function, though this has been attempted by many celebrated thinkers, quite a number of whom maintain that beyond maintaining order, protecting the weak against the oppressions of the strong, and adopting needful regulations to preserve the public health, governmental interference is mostly wrong and harmful. Be this as it may, it is an ideal to be reached, if at all, in the future even by the most advanced government. In the meantime it is necessary to guard against reactionary tendencies. There is a good deal of faith abroad in the omnipotence of governmental agency. The theories of those who believe that it is the duty and function of the Government to achieve for the people all kinds of prosperity are not likely to become very formidable, or long enduring.

How this is to be brought about, these enthusiasts never define, except by proposing to multiply indefinitely bits of paper which they are pleased to call money.

But there is too wide a diffusion among the people of a knowledge of the more obvious truths of political economy to permit this to become dangerously catching.

Perhaps a greater source of danger springing from a like idea is inspired by philanthropic motives, and is manifested in a growing disposition to use the Government as an instrumentality to achieve moral ends. With the advance of civilization there is more intense perception of suffering and abuse, and a quickening of human sympathies, and concomitantly the awakening of a new form of enthusiasm, an impatient zeal for the immediate removal of the evils, and too little faith in any but external and forcible remedies. To many it seems worse than folly to forego the use of law where that furnishes an apparent remedy. But it will perhaps always remain a disputable problem how far the club of the policeman can be usefully employed as an inspiration to moral impulses.

It should be borne in mind that not every enactment that finds a place in the statute book becomes a law. It may be opposed to the spirit and genius of the people, or it may prove to be impracticable in operation, or for other reasons it may fail to serve the true purposes of a law. One of the necessary attributes of law is that of invariable sequence. Laws may fail to be carried out through escape of the wrong-doer, through ignorance or false evidence; but these are infirmities which attach to administration, and do not furnish a test either of the validity or effectiveness of law.

But if a given law does not follow the rule of invariable sequence, or an invariable tendency to carry it out, save for the exceptional causes indicated, it is not a true law. It either fails to respond to recognized social needs, or is uncongenial to the public conscience. Laws of this character are not usually long-lived: they either gradually fall into disuse, become obsolete, or, failing of their evident purpose, are repealed.

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We have already seen that the advancement of civilization is marked by a tendency of the state to relinquish one claim after another to interfere with individual spontaneity. As this process proceeds the government becomes stronger, more certain and efficient in performing the functions that remain.

As a rule, it is reasonable to conclude, *prima facie*, when we see a proposition agitated to add to the duties of the state in matters not previously the subject of public cognizance, and which possesses little in common with what appears to be, or has been considered, its normal province, that the agitation is in the wrong direction.

What then is the position and function of the lawyer in this process of evolution? He is, and from his qualifications and relations to the commonwealth must be, largely concerned with the work of legislation. The duty devolves upon him not only to interpret and apply the law of to-day, but also to gather from a study of history and the general trend of society what the law tends to become. He should be a conservative and balancing factor in the scheme of progress. Without facile yielding to the clamor of ephemeral agitations, he should seek to mould the law to meet the necessary exigencies of changing situations and conditions, always with a view of protecting rights which are menaced. He may rest assured that notwithstanding temporary aberrations and turnings this way and that from a direct course, the general tendency of society will be forward, led by its polar star, the ideal of the national existence, the rights of man.

It is important to consider also the necessary limitations of government.

In the evolution of law and its attempted adaptation to the ever-changing phases of society, it is of prime importance to observe its necessary limitations in a free state. If results are promised to expectant masses of the people through the instrumentality of law which cannot be realized, as, for example, the improvement of material conditions and the abolishment of the poverty and social miseries of the poor—when these fail, you are tempted to enter upon a course of delusive experiments, dangerous to liberty and obstructive of real progress. Take, for example, the relations between capital and labor. This is a subject that offers to statesmanship one of its most perplexing problems. The general feeling of unrest and discontent that prevails in nearly all departments of industry, resulting in strikes, lock-outs, boycotts, and political agitation for the betterment of the condition of the working classes, furnishes abundant evidence that present conditions are unsatisfactory and unstable.

What are these relations?

In the law, they rest upon the basis of free contract. The laborer has the right to dispose of his labor and skill in such way and upon such terms as may best serve his own interest, and the employer to secure the most efficient labor at the lowest obtainable price. In theory, they stand upon an equality, and in so far as their relations rest in law their rights bear that attribute. The law recognizes the absolute right of the laborer to dispose of his own earning power, or services and skill, in whatever lawful manner, and upon whatever terms will best promote his advantage. This is necessary to the preservation

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of personal liberty. It also assures to the capitalist the right to employ his means or capital in such manner as he deems most conducive to his interest, including the employment of labor upon such terms as may suit his purpose. This is necessary to preserve the rights of property. In fact, however, their situation is unequal. The laborer is not in a situation where he can by means of free contract exact equal terms with his employer.

But this results not from any unequal legal status, for they are both free to contract, or not, or agree upon such terms as are suitable to both, but their inequality is due to conditions which the law in a free state is powerless to control. The capitalist is able to wait and to haggle for terms; the laborer's necessities are more pressing. Suppose two men join their resources together to convert an article of value into one of greater value, and that their contribution to the result is of equal value. The one contributes labor and skill, the other supplies what we term capital. As between two persons contributing equal shares of the joint capital, the new increment of value would belong to them in equal shares. It would seem but just that the same result should follow where the same increment of value is the joint product of labor and capital. But the laborer, by reason of his less favorable situation, is not able to make for himself these apparently fair terms, and, speaking in general terms, the capitalist gets the increment of value and the laborer the cost of his maintenance, plus wear and tear, the plus representing enough to rear up children to take his place when he is worn out. Suppose you reverse the situation; hand over to the laborer the whole of the profits and reserve to the capitalist his machinery plus the cost of the fuel and a sinking fund sufficient to replace the old when worn out. The injustice of this is obvious; it is in fact an expropriation of property; but it serves to illustrate the industrial situation of the laborer.

Such is the situation. By what means can it be improved? By legislation? In what manner? Only by abrogating the freedom of one of the parties, the manual laborer, and invading the rights of property. If the state assumes to interfere in the supposed interest of a class — the manual laborers — and to determine that their well-being demands the payment of a certain standard of wage, it must do so upon a theory that takes no note or cognizance of individual right to dispose of his own personal services in accordance with his own choice as to terms.

But it also involves the destruction of property rights. A regulation of property in the interests of labor must necessarily include all forms of property and its multiform uses. If it embraced that only which was directly connected with the employment of labor, those uses or forms of capital which had escaped these restraints would be preferable, and capital would be determined to these, and the amount available for the employment of labor would constantly diminish.

But one of the prime factors determining the wage rate is the amount of capital compared to population available for employment in industrial enterprises that require labor.

To counteract the tendency thus indicated it would be necessary for the

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state to seize all property and administer it through public officials. This involves the destruction of the liberty of the laborers, for since the state has undertaken the function of administering all capital and directing labor, it is in duty bound to appoint each man his task and compel its performance. The whole course of modern progress and civilization is in the opposite direction to this. We are proceeding in that direction which aims to secure to each individual citizen the complete right of self-development upon the basis of property; and this includes the aggregate of man's faculties, rights, possessions, and means. It is one of the great objects of government to eliminate from the struggle for the acquirement and possession of property and the enjoyment of its uses, the elements of constraint, coercion, fraud, and brute force.

Whatever causes tend to diminish capital, or to impair its security, or value in use, serve to lessen the aggregate and efficient use of the means available for the employment of labor, and to lower the rate of its compensation. The only useful service the state can render to these relationships is to add whatever safeguards may be needed to the complete security of respective rights upon the basis of freedom.

It has been maintained, and at first glance it would seem, that the same policy should be applied to those common carriers who control and operate railroads. But I think that a slight acquaintance with these works, and the nature of the relations to which they give rise, will reveal the necessity of a system of legal regulation. Moreover, the enormous development of the railroads in recent times, and the vast variety of conflicting interests to which they give rise, requires an extension of state interference to an extent and in a direction not heretofore practically attempted. This necessity has been felt wherever railroads have penetrated.

A consideration of the subject embracing the character of this agency, and its relations to the public, will, I think, show that state interference is not only justifiable, but necessary to the security of those relative rights which are of fundamental importance in a free state. These agencies are possessed of interests which are in direct opposition to those of the community, and yet they can only be held to an adequate practical responsibility through direct state interference. They have driven all other competition from the field, and reduced competition to a struggle among themselves. They have become absolutely indispensable in carrying on the intercourse and commerce of the country. It is no longer a matter of choice with individuals whether they will employ railroads or some other agency in such intercourse or business. They are thus armed with immense power for evil as well as for good, against which individual opposition would be futile; and, coalescing together, these corporate bodies might dominate the interests, the fortunes and the political life of the people.

Their control and management represents no fixed or continuing responsibility; they undergo a continual process of change. Even before the era of railroads it was deemed necessary to prescribe the relations of the common carrier to the people. Roughly speaking, the common carrier was under obli-

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gations to carry safely the goods intrusted to him, and was entitled to a reasonable compensation for the service. So long as commerce continued to be carried on through the primitive instrumentalities existing before the railroads, competition among those agencies could be relied on to determine the reasonableness of the charges for the services. With the facility for combination among railroads, and their inevitable tendency to aggregate into systems which operate and dominate distinct fields, competitive forces, which before prevailed, can no longer be depended on.

Railroad regulation so far has had sole reference to the protection of the rights and interests of that part of the community whose interests are deemed to be in direct opposition to those of the railroad, *i. e.*, those who employ them. It has been assumed that those whose interests are directly connected with the roads, viz., those who hold their stocks and securities, will be sufficiently protected by the corporate bodies themselves. This assumption the whole history of railroad development has shown to be fallacious. And I think it can be easily shown that to render any system of regulation either just or effective in the protection of any class, it must fairly provide for the interests or rights of all.

The measures of regulation so far attempted have had sole reference to charges which are deemed unjust in themselves, or unjust relatively to other charges by the same company for like services for another. Manifestly, unless the facts and circumstances furnish a criterion of the rates to be charged, no safe judgment can be formed as to whether the charges actually made are reasonable or otherwise. Where a system of regulation is founded in law, certainty and uniformity are the first requisites. It is neither just nor consonant to the spirit of the law to commit the interests of any class to the capricious or arbitrary judgments of men appointed to administer that law. Yet this is what is done when the law, without furnishing any rule by which rates are to be judged, sets men in judgment over them. The word "reasonable," which supplies the only test, conveys no definite meaning, and is as flexible as the human mind. It is evident that if the corporation is required to perform the services it undertakes for less than is a reasonable compensation, those who have furnished the instrumentalities and have performed the service suffer a diminution of their rights. If more than a fair remuneration is exacted, the persons of whom it is exacted are in like manner deprived of rights. Yet such is the chaotic condition of the law that it is quite impossible, except in extreme cases, to determine which side is being wronged. Indeed, it not infrequently happens that those who have supplied the works and performed the service are inadequately remunerated, notwithstanding excessive rates of charges. This may result in many instances from a variety of causes which may not be avoided. But excessive charges should be prevented wherever this can be done within the just powers of the government, and, in supplying such prevention, furnish a rule to test the rates.

It is evident that justice requires that the charges should be sufficient to pay the cost of the service, including an efficient maintenance of the property em-

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ployed therein, and a fair remuneration for the investment. The practical difficulty arises in determining what is the investment. The existing stock and funded debt are supposed to represent this; but in fact these represent very frequently much more, and it is quite impossible in the majority of instances to separate that which has been invested in the works from that part which has been invested in the pockets of unfaithful directors, and others concerned in the management of the corporate affairs.

To provide for any effective regulation of railroad management it is necessary that the law should strike deeper than has yet been attempted. It should forbid, under severe penalties, any director, or officer, or other person connected with the corporation, purchasing any of the securities issued by the company except in open competition with all others. It should require a full and faithful account to be kept of the amount of moneys derived from these sales, and the uses made of such moneys, and a public report made of the same. It should forbid, under like penalties, the issuance of full-paid shares until full payment has been made; and these shares should remain assessable up to full payment. The condition of the stock should be made public in like manner. Stock-dividends and other forms of stock-watering should be declared a high crime, and punished as such.

Provisions of this nature would go far to assure the public that railroad property was on a legitimate basis, and they would establish a status from which, compared with the earnings of the road, it could be ascertained whether the rates charged for service were reasonable or otherwise. They would serve to check reckless and unnecessary railroad building, since one of the chief incentives to this source of waste would be taken away — the enormous illegitimate profits to favored persons. Bankruptcy and receiverships would be less frequent, and both the bond-holders and general public would be better protected. Without them any system of regulation will always remain inadequate and unsatisfactory.

If the state has a right to regulate at all, it has the right to regulate from the bottom. Its right is based upon the primary duty of the state to afford protection to its citizens, both those who invest their means in these important enterprises, as well as those who employ them in their intercourse and business; and its duty is as imperative in the one case as in the other.

This will not reach those existing properties in which investments have become fixed. But many of these will doubtless in the course of time have to undergo reorganization. Bankruptcy is the goal of many of the already overloaded railroad properties of the country.

Care should be taken to guard against the perpetration of like frauds in the reorganization as those which served to wreck these properties in the first place. The stock issued upon such reorganization should represent its face value of actual investment, and the creation of fictitious capital should be strictly prohibited.

There are those among us who believe that these works should be owned and operated by the Government. You cannot cure one set of evils by substituting a greater.

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Notwithstanding the wastefulness that has attended the creation of the railway system in the United States; in economy, in energy, enterprise and efficiency, and the usefulness and cheapness of the service they render the public, the efforts of the strongest governments which have undertaken the work of construction and operation of railroads, have been surpassed.

The problems that arise out of the distribution of railroads in any European country are quite simple compared to those that exist here. The great length of line, the peculiar distribution of land and navigable waters within the United States, give rise to problems which, if they arise at all, present themselves in simpler and minor form elsewhere. To attempt to arrange railroad rates upon any schedule of ideal equality would change the currents of internal commerce, would bring paralysis and desolation to many prosperous cities, would render valueless and useless hundreds of millions worth of property employed in manufacturing and other lines of production, would compel a reconstitution of industry and a redistribution of commercial centers. The loss and destitution thus resulting would be appalling.

Under government ownership and management of the railroads every voter would have a voice in the management. Politics would degenerate into an intense and eternal struggle of one locality with another for commercial advantages through railroad manipulation. Conflicts, antagonisms and rivalries upon the mere basis of selfish interests would arise which could not be reconciled. Combinations would be sought among those who deemed their interests sufficiently identical to furnish a motive to sink minor differences, and thus section against section, one interest against another, would be arrayed in sordid conflict. In the meantime, the great ideal of the Republic would be lost sight of —and who could predict or foresee the end of such a chaotic scramble?

You may ask me why, since the Government assumes the right to control the management of railroads, these results are not already apparent.

I answer, they are, but in a minor degree. The immense volume of selfish passion which would be let loose in case of public ownership, finds its counterpoise in the solemn sanction which the constitution and laws, and the moral consciousness of the nation, give to the rights of private property in them.

If you want to put the Government into any kind of business besides that of providing just laws to regulate the business of others, and impartially and efficiently administering them, don't harness it to a business that will provoke eternal conflict with itself.

To assume that the Government is incapable of providing and enforcing just regulations in respect to the business of internal commerce without conducting the business itself, is to pronounce the Government a failure.

Within a few years the methods and the instrumentalities of intercourse and commerce have totally changed. These changed conditions, giving rise to new and more complicated relationships, require such a moulding of the law to them as will bring them into harmony with what shall appear to be just or right. And this work is in large measure the province of the lawyer, in the courts and in the legislative halls.

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There is too much energy, and enterprise, and vim in the American character to ever permit the business of the country lapsing into the hands of the Government. And a people who have realized in organization the ideally best form of government, that form in which the ultimate sovereign power is in all the people, will not fail to combine with it that order of functions which, while affording every needed protection, will secure the largest measure of individual liberty compatible with the welfare of the whole.

THE LAW-MAKING POWER.

BY HENRY WADE ROGERS, LL.D.

Mr. President, and Gentlemen of the Kansas Bar Association: The law-making power of the state is the governing power of the state. It is the power to make laws, and to alter and repeal them. It is the power to regulate civil conduct; to promote by good laws the welfare of the subject, or by bad laws to provoke calamity and ruin.

When the American people came to establish governments, they acted on the principle that the law-making power should be kept distinct from the law-executing and the law-interpreting powers. They understood perfectly well that any government must of necessity be an arbitrary government where such a separation of the powers is not established. They consequently in the constitutions of the several States, and in that of the Federal Government, lodged the legislative power in one body, the executive power in another body, and the judicial power in still another.

While the legislative, executive and judicial departments of government are coördinate in theory, yet in reality circumstances conspire to give to the legislative department a superiority over the other two. Its constitutional powers are conceded to be more extensive, and, as Madison declared, less susceptible of precise limits. More frequently than the other two it usurps powers that do not pertain to it. The tendency from the beginning of our history has been toward an aggrandizement of the legislative power at the expense of the other departments of the government. "In republican governments," says Hamilton, "the legislative authority necessarily predominates."

The judicial branch of the government is regarded as the weakest of the three great departments. Montesquieu asserts that the judiciary is, as compared with the other departments, "next to nothing." And Hamilton, in the *Federalist*, speaks as follows of it:

"Whoever attentively considers the different departments of power must perceive that in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous

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to the political rights of the constitution, because it will be least in a capacity to annoy or injure them." (*Federalist*, p. 575.)

The executive holds the sword, the legislature the power.

In law-making the chief power rests with those who have the right of initiating legislation. In earlier times the right of initiative was with the king, and the assembly assented or withheld its assent in respect to matters which he proposed. In the law-making bodies of our own country the method of making laws is exactly the reverse. The legislature initiates, and the executive approves or vetoes the laws proposed to him.

Legislatures, as law-making bodies, are comparatively of very recent appearance. The earliest attempt to distinguish between legislative and executive power is attributed to an Italian writer of the fourteenth century. The assemblies from which many of the legislative bodies have been derived were assemblies of the great men of the state, whose office it was simply to advise and control the king. They did not originate, or make laws in the manner in which that power is now exercised by the law-making bodies.

The American people in framing the several State constitutions did not exhibit any special distrust of the legislative department. In the first State constitutions the law-making power was conferred in very general terms, and such restraints as were imposed resulted rather as a consequence of a written instrument and of a division of power than as a principle, had in mind in creating the government. The people distrusted both the executive and the judicial departments more than they did the legislative department. In nine of thirteen of the States the constitutions provided that the Governor should be elected by the legislative department, and in eleven States he was given no veto on the action of the legislative body. In five of the States the legislature had the power to review the action of the judiciary, being authorized to sit as a court of last resort. It was not long however before experience demonstrated that it was the legislative power after all which was dangerous and upon which it was desirable to impose additional restrictions.

If we examine the systems of government which exist in Europe and contrast their legislative departments with those we have established, we shall find marked differences distinguishing them. Sir Edward Coke said of the power and jurisdiction of Parliament that "it is so transcendent and absolute that it cannot be confined, either for persons or causes, within any bounds. . . . It hath sovereign and uncontrolled authority in the making, confirming, enlarging, restraining, abrogating, repealing, reviving and expounding of laws, concerning matters of all possible denominations, ecclesiastical or temporal, civil, military, maritime or criminal; this being the place where that absolute despotic power, which must in all governments reside somewhere, is intrusted by the constitution of these kingdoms."

In France, too, the legislative department is supreme. The Chamber of Deputies and the Senate seem to be invested with sovereign power, and can alter at their will the constitution itself.

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The American people, it is unnecessary to say, have never conferred on the legislative department in any State, or in the Nation, any such unlimited power as is possessed by the law-making power in the countries I have named. On the other hand, the people in this country have conferred on the legislative department in each State, as well as in the Nation, a more absolute power than is conferred upon the same department in the Swiss Confederation.

It is a settled maxim of constitutional law in the United States, that the law-making power conferred upon the legislative department cannot be delegated to any other body or authority. "The prevailing doctrine in the courts appears to be, that except in those cases where by the constitution the people have expressly reserved to themselves a power of decision, the function of legislation cannot be exercised by them, even to the extent of accepting or rejecting a law which has been framed for their consideration."* But in Switzerland the legislative department of the government is obliged to submit the laws which it passes to a vote of the people, provided a sufficient number of citizens petition that they be submitted to that ordeal. In some of the States of Switzerland, no law which has passed the legislature can go into operation until it has been submitted to the people and approved by them.

The history of the English Parliament shows that the functions which it performs at the present time are very different from those which it discharged in former times. The idea which we now have of it is that it is a law-making, a law-creating body. But this was not its function in the earlier ages. It was designed to be not so much a law-creating as a law-preserving body. The existing laws and customs of the people were not to be changed by the king unless the parliament consented thereto. The principal concern of the people was to preserve their old laws and customs, not to enact new ones, or alter the old ones. The Great Charter of King John claimed to be a transcript of ancient laws, and not a creation of new rights and privileges. Its language was:

"No freeman shall be taken or imprisoned, or disseized, or outlawed, or banished, or in any wise destroyed, nor will we pass upon him or commit him to prison unless by the legal judgment of his peers or *by the law of the land.*"

But it is noticeable that this document, so often referred to as the foundation of constitutional government in England, and as the basis of our liberties, contains no reference to the previous existence of any legislative assembly, and makes no provision for creating any such assembly in the future, although it provides for an election in each county of twelve knights whose duty it shall be to inquire of bad customs to be abolished in the manner specified in the Charter. Beyond providing an assembly for this repeal of bad customs, and for the imposition of taxes or aids, as well as for the conversion of military service due by tenure into the payment of a money rent, the people of that time do not appear to have been concerned about the subject of legislation.†

In Great Britain, we are told by a writer on the English Constitution, that the legislature chosen, in name, to make laws, "in fact finds its principal busi-

* Constitutional Limitations, p. 143.

† See Smith's History of the English Parliament, vol. 1, p. 100.

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ness in making and in keeping an executive"—meaning thereby the prime minister.* The cabinet system prevailing in that country clearly weakens the legislative power. A cabinet often compels legislation by a threat of dissolution, or by a threat of resignation. The fear that if one votes against the ministry one may soon not have a vote at all, is a potential factor in securing the passage of measures which the ministry desire. The writer last referred to expresses the opinion that in England a strong cabinet can obtain the concurrence of the legislature in all acts which facilitate its administration,† and he declares that members of the House of Commons are mostly, perhaps, elected because they will vote for a particular ministry, rather than for purely legislative reasons,‡ the House of Commons being mainly and above all things an elective assembly. The election, he says, is now the most important function of the House of Commons. It does not rule—it only elects the rulers.‖

The law-making power does not reside exclusively in the legislative department of government. It is found to exist in the judicial department, which creates law as well as interprets it. In theory the legislative and judicial departments of the government are separate and distinct. The function of the legislative department is to enact the law, while that of the judicial department is simply to interpret it. But while this separation may be theoretically complete, it is found not so in actual practice. You do not need to be reminded that the judges in our courts of last resort are obliged to legislate in cases which are new in principle, and in respect to which the legislative will is unexpressed. In such cases the courts make new rules, and in doing so exercise the legislative function. And this power the courts possess even under constitutions the most explicit in forbidding either of the three departments of government exercising the powers of the other two. The Massachusetts constitution of 1780, for instance, declared that the legislative department—

"shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws, and not of men."

But such a provision as this did not prevent, and was not intended to prevent, the judges, in deciding cases, from establishing new principles where the statutory law was inapplicable and no precedent could be found which governed the questions in dispute.

The courts exercise the law-making power not alone in cases where the legislative will is unexpressed. They exercise it as well in cases where it is expressed, when they are called on to interpret the meaning of the statute in which the legislative will is supposed to be embodied. To quote the words of

* Bagehot on the English Constitution, 3d ed., p. 12.

† Ibid, p. 23.

‡ Ibid, pp. 25, 142.

‖ Ibid, pp. 132, 140. "A good horse likes to feel the rider's bit; and a great deliberative assembly likes to feel that it is under worthy guidance. A minister who succumbs to the House—who ostentatiously seeks its pleasure—who does not try to regulate it—who will not boldly point out plain errors to it, seldom thrives."

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an English bishop, spoken almost two hundred years ago, and quoted several times of late:

"Whoever hath an absolute authority to interpret any written or spoken laws, it is he who is truly the law-giver, to all intents and purposes, and not the person who first wrote or spoke them."

Before him, and three hundred years ago, Montaigne had written:

"I am not much pleased with his opinion, who thought by the multitude of laws to curb the authority of judges. . . . He was not aware that there is as much liberty and stretch in the interpretation of laws as in their fashion; . . . human wit does not find the field less spacious wherein to controvert the sense of another than to deliver his own."*

Not only is it true that the courts make law, but they make more law than do the legislative bodies. Lord Mansfield is quoted as saying to a friend that in his judicial work he created more law than both houses of Parliament.

The law of bailments resulted from an exercise of the law-making power of the judiciary in the great case of *Coggs v. Bernard*, when Lord Holt introduced the whole civil law relating to that subject into the common law of England. This branch of the law was not planted on its Roman foundation by any action of Parliament, but is pure and simple judge-made law. The law of insurance was practically created by Lord Mansfield. He it likewise was who established our system of maritime law, ingrafting into the common law principles never enacted by the legislative department. He built up the commercial law of England, adopting from the law of the continent such principles as commended themselves to his judgment as most just and useful. So in the exercise of the law-making power of the judiciary, Lord Nottingham and Lord Hardwicke reduced the principles of equity into a scientific system. The most useful and important principles of the law of contracts are not to be found in the statutes enacted by Parliament, but were incorporated into the common law by judges who borrowed them from the civil law.

As between the legislature and the judiciary, the former is the superior law-making power of the state, as it has the authority to declare that the law as promulgated by the latter power shall not be law thereafter. And the tendency of our times has been for this superior law-making power to narrow materially the domain within which this inferior power can legislate. It is evident that every time a legislature regulates by statute a subject which before was governed by the common law, it limits *pro tanto* the legislative power of the judiciary. For while a rule rests on unwritten law, the courts may modify or change it by a reëxamination or re-interpretation of the previously decided cases; but they lose that right the moment the legislature passes a statute declaring a written rule. Then the power of the courts is confined simply to an interpretation of the language which the legislature has employed. To the extent that the law is codified, to that extent the judiciary is limited in its legislative powers. Codification means a transfer from the judiciary to the legislature of the development of the law, and an elimination, in very large degree,

* Montaigne's Works, p. 519.

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of the judiciary as a law-making power. When codification is accomplished, judicial legislation ceases except to the extent that it becomes necessary to construe the written language.

The law-making power of the courts is often attacked on the ground that it is "undemocratic," and that it is contrary to the genius of our American States that legislation should emanate from any but the people's representatives, and be other than an expression of the popular will. That the legislatures of the States should seek to place limitations on the law-making power of the judiciary is in accord with the democratic idea. In the history of the exercise of the law-making power in the United States we might naturally expect to find the legislatures narrowing the bonds of judicial legislation in obedience to the imperious demand of the people that they should be permitted to formulate the laws through their representatives chosen for the purpose. But as a matter of fact, thus far in our history the demand that the courts should be deprived of their law-making power has been made almost exclusively by the members of our own profession, the people as such apparently taking little interest in the matter. It is also probably true that the profession, as a whole, has until lately been opposed to the change. In this country the movement in favor of a codification of the law began in the State of New York, with the adoption of its Code of 1848. It was received in its own State with a tide of professional derision. We are told that in 1850, at a banquet of the New York City Bar, one of its most distinguished members proposed as a toast, "Jack Cade and Jack Code!"—and that the toast was drunk with much eclat. And Mr. David Dudley Field himself declared, speaking a year or so ago in relation to the codification of the law in New York, that "nothing of this would have come about if the lawyers of New York as a body had had their way."*

The appointment of the commission in New York with instructions to reduce into a systematic and written code so much of the law of the State as they might deem practicable and expedient was due to action taken by the Constitutional Convention of 1846; and it is fair to say that the resolution authorizing the appointment of the commission was not introduced by a lawyer, but by a merchant from the city of New York, Mr. Campbell P. White. The agitation in favor of the movement originated as early as 1826, with a small coterie of lawyers, and the discussion was mainly confined to members of the profession. The fact that the resolution was formally moved by a layman, of course affords no proof even that it was drawn by a layman, and certainly does not establish the fact that the people as such were deeply interested in the matter.

The law-making power of the legislative department of government generally operates prospectively, while that of the judiciary operates retrospectively. Retrospective legislation proceeding from the legislative department is so objectionable in principle that the judicial department will decline so to construe an act of the legislature as to give it retrospective operation, unless the legislature has very clearly indicated its intention that a contrary construction shall be given. The judiciary will not lightly imply an intent that the legislature

* See his article in *American Law Review* for August, 1891.

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intended to enact a retrospective law. And indeed in some of the States the people have by a constitutional provision prohibited the legislative department from passing such laws. "The General Assembly shall have no power to pass retroactive laws" is the language used in the constitutions of several of the States. The judiciary in announcing a new principle must of necessity make it applicable to past transactions—to the case or transaction then before the court. Judge-made law, therefore, Bentham took great delight in referring to as dog-law; "You wait till your dog does the thing you want to break him of, and then you beat him for it."

But the law-making power in this country is not alone in the legislative and judicial departments of government. The people of the several States, in the constitutions which they have established, have reserved to themselves some portion of this power by requiring that certain proposed laws shall be submitted to them for their approval. The legislative department may propose constitutional amendments, but cannot make them a part of the fundamental law without submitting them to a vote of the people. Delaware furnishes the only exception to the principle stated, and in that State alone are the people without any direct share in amending their constitution. In a large number of the States the people have reserved the right to pass upon laws which create State debts beyond a certain specified amount. This is the case in California, Idaho, Illinois, Iowa, Kansas, Kentucky, Montana, Missouri, New Jersey, New York, Rhode Island, Washington, and Wyoming. In other States the people have reserved to themselves the right to pass on laws loaning the credit of the State to any person, association, or corporation. There are like reservations of power in the constitutions of the several States in regard to various matters which do not need enumeration here. There seems to be a sentiment more or less prevalent among the people in favor of extending this right of popular legislation by the introduction of the principle of the Swiss Referendum. The People's party in the platform adopted by their national convention in 1892 commended to the favorable consideration of the people, "the legislative system known as the Initiative and Referendum." The National Socialistic Labor party of the United States declares that "the people have the right to propose laws and to vote upon all measures of importance according to the Referendum principle."

It is usual to provide a check on the law-making power of our legislative assemblies by conferring on the executive department of the government a qualified veto power. Whatever may have been thought in other periods of our history, the general opinion in this country at the present time favors the existence of a qualified veto in the executive, and the bitterness with which the old Whig party once assailed it has passed away. The early Presidents used the power only in rare instances. Washington vetoed but two measures, Madison six, and Monroe one. Adams and Jefferson did not exercise the power in a single instance. Since the close of the civil war it has been employed much more frequently. Mr. Lincoln only used it on three occasions. But Johnson vetoed twenty-one bills, Grant forty-three, and Mr. Cleveland in

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his first administration three hundred and one, being more than twice as often as all the other Presidents combined. As a result, a Senate committee made Mr. Cleveland's course the subject of a special report, stating that it was an unconstitutional exercise of power for a President to refuse to sign a bill simply because he disagreed with Congress regarding the expediency of the measure. In this conclusion the Senate committee was undoubtedly mistaken. The constitution confers the power on the executive, and does not undertake to define the reasons for its exercise. It rests therefore in the sound discretion of the executive to make use of it, or not, for reasons satisfactory to himself. Washington based his second veto solely on expediency. And it may well be employed to prevent hasty, useless, unconstitutional, or impolitic legislation. In this country it has worked well in practice. It has been said that the power of preventing bad laws includes that of preventing good ones. And it has been well answered by Hamilton, that "The injury which may possibly be done by defeating a few good laws, will be amply compensated by the advantage of preventing a number of bad ones." The danger to be dreaded is not one arising from a dearth of legislation, but from over-legislation.

Under the American system of Government the law-making power of the judicial department can be checked by the law-making power of the legislative department, not as affecting the particular case adjudicated upon, but in respect to all like cases thereafter arising. The law-making power of the legislative department is held in check by the judicial department, which can nullify any act of the legislative department which violates the fundamental law as it is embodied in the constitution of either the State or the United States. The law-making power of the people is held in check by the fundamental law which they themselves have established. Under the system of government prevailing in Great Britain the law-making power of the legislative department is supreme. It is not held in check either by the executive or the judicial departments of the Government, and the people have imposed no restraint on its exercise in any fundamental law. In Germany the Constitution of the Empire defines and limits the law-making powers possessed by the Bundesrath and the Reichstag, but the judicial department of the government has no check upon an unconstitutional exercise of the law-making power by the bodies referred to. In Switzerland, too, the judicial power of the federal tribunal cannot check the law-making power lodged in the Federal Assembly by pronouncing it to be in violation of the constitution of the Confederation. But in that country the people have reserved unto themselves the power to directly nullify the action of the law-making power by means of the Referendum. In France, under the old monarchy and an unwritten constitution, the judicial department did in several instances declare the acts of the legislative department void as being contrary to binding right. But the constitution of 1791, which was the first written one in Europe, declared that the judicial tribunals could not "interfere with the exercise of the legislative power." And that restriction has continued in force in France under all forms of government, from that time to this. Mr. Brinton Coxe has called attention to the noteworthy fact that in France the

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power of the judiciary to nullify the action of the law-making power was recognized under an unwritten constitution and derived under a written one. He adds that "French public law upon the subject is thus in direct contradiction to Marshall's view of written constitutions."*

The question suggests itself whether the law-making power should be lodged in a legislative assembly composed of a large or a small number of representatives. At the present time the British House of Commons consists of 670 members. The French Chamber of Deputies contains 584 members. The German Reichstag is constituted of 397 members; and the House of Representatives at Washington of 332 members. The ratio of representation is therefore smaller in the United States than in any of the countries named. We are sometimes told that in a multitude of counselors there is safety. It is also claimed that it is easier to corrupt a small body than a large one, and therefore there is less likelihood of corrupt and scandalous legislation where the law-making assembly is composed of many members. But it may be doubted whether our experience in the United States justifies the claim thus made. In some of our State legislatures where the membership has been the largest, the most venal and iniquitous legislation has been enacted. The "big membership" theory has not everywhere worked well as a safeguard against corruption.† Alexander Hamilton expressed the opinion in the *Federalist*, that in all legislative assemblies, the greater the number composing them may be, the fewer will be the men who will in fact direct their proceedings. The reasons which he gives for the opinion seem eminently sound. He says:

"In the first place, the more numerous any assembly may be, of whatever characters composed, the greater is known to be the ascendency of passion over reason. In the next place, the larger the number the greater will be the proportion of members of limited information and of weak capacities. . . . It is precisely on characters of this description, that the eloquence and address of the few are known to act with all their force."

He spoke with much wisdom when he declared in the same connection:

"The people can never err more than in supposing that by multiplying their representatives beyond a certain limit, they strengthen the barrier against the government of a few. Experience will forever admonish them, that, on the contrary, *after securing a sufficient number for the purposes of safety, of local information, and of diffusive sympathy with the whole society*, they will counteract their own views, by every addition to their representatives."

In framing the fundamental law for our States this statement of Hamilton's should be accepted as a sound principle of political science, and one that cannot be disregarded but to our prejudice.

The method which the law-making power pursues in ascertaining the collective will of its members, sometimes becomes a matter of great importance. Until recently no limit was placed on the time within which debate might continue, in the British Parliament. Filibustering, or systematic obstruction, was rarely resorted to till within the last twenty years. In the debates on the Irish

* Coxe's Essay on Judicial Power, p. 83.

† See *The Nation*, June 23d, 1892, p. 460.

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question, in 1877, and again in 1881, the filibustering was so persistent that a closure rule was enacted in 1882, which gave the Speaker of the House of Commons the right of informing the House that he thought the time for closing the debate had arrived, so that a motion to that effect might then be made. In 1887 a rule was adopted and is still in force in the House of Commons, which provides that any member may move "that the question be now put," and "unless it shall appear to the chair that such motion is an abuse of the rules of the House or an infringement of the rights of the majority," the question shall be put and decided without debate. In both houses of Parliament each member present is held bound to vote, and can be compelled to vote. This has always been the rule in that country. The minority cannot defeat legislation, either by filibustering tactics or by breaking the quorum in declining to vote.

In the Senate of the United States neither of the rules mentioned is in force, and out of respect to the so-called "courtesy" of that body a minority can obstruct important legislation, for weeks at a time, to the serious injury of the business of the country. The recent experiences in the Senate were a humiliation and a shame, and seriously impaired, both at home and abroad, the respect entertained for the upper house of Congress. Any system of rules, or miscalled "courtesy," which enables a small fraction of a body to paralyze legislation by refusing to vote deserves the most severe condemnation. The House of Representatives in 1890 adopted a rule, not now in force, providing that to make a quorum "the names of members present who do not vote shall be noted by the clerk and recorded in the journal." Under the rules at present in force in the House it is possible to terminate debate, but there is no method by which the majority can legislate if the minority break the quorum by declining to vote. The constitution gives even to the minority of each house a power to compel the attendance of absent members. But what does their presence avail if they can sit in their seats and paralyze all legislation by declining to vote? The rules of all law-making bodies should give to the presiding officer, under such circumstances, the power either to count a quorum, or to punish the obstructionists for disorderly behavior. Each house of Congress is given by the Constitution the power to punish its members for disorderly behavior. It is difficult to imagine any conduct more disorderly than that which is designed deliberately to make all legislation impossible.

In France the theory is that the President of the Chamber of Deputies has a right, in order to obtain a quorum, to count all members who are present at the time, whether they vote or not. This it is asserted he can do whether the authority is incorporated in the rules or not. But their rules contain a peculiar provision to the effect "that, in case no quorum is present, a vote on the question under discussion will be called for at the next sitting, when the result will be valid whatever may be the number of deputies who take part in the ballot. So the President orders a vote, declares there is not a quorum, adjourns the sitting, calls the house to order again at the end of ten minutes, and then orders a new vote, which this time becomes valid."*

*See 153 *North American Review*, p. 738.

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In Germany a member present and not voting is counted in order to make a quorum.

In Switzerland it is necessary that the quorum should be present, but not that they should vote. If a quorum is present the ballot is binding when it is a majority of those voting.

Your attention has been directed to the fact that when the people in this country came to establish State constitutions it was not the legislative department that they distrusted. Experience soon led them to see the mistake they had committed. The legislative department has been deprived of the power it formerly possessed, of electing the executive: his term of office has been extended until in almost half the States he now holds for four years instead of one as formerly; and he has in almost every State been given the veto power as a check upon legislation, whereas formerly he possessed it not. The legislative department, which in some of the States formerly constituted the court of final resort, has been deprived of such power. This distrust of the legislative department has caused a large number of constitutional restrictions to be imposed upon its law-making power. In respect to a number of subjects they are absolutely prohibited from legislating at all, while as to many others they are only permitted to legislate by a general law. And upon whatever subject they legislate they are required to observe certain set forms thought essential to due care and deliberation, and as a preventive of fraud. The extent of the change which has been made in the powers of the legislative department may perhaps be better understood by a comparison which Mr. Henry Hitchcock of St. Louis has made between the Missouri constitution of 1820 with the constitution adopted in the same State in 1875. Mr. Hitchcock tells us that the constitution of 1820 with all its amendments up to 1855 contained only three express restrictions on the legislative power, while the constitution of 1875 in its fourth article contains fifty-six sections, more than half of which, he says, either prohibit the enactment of laws upon specified subjects, or prescribe the manner of enacting, amending, and repealing laws already in force.

Notwithstanding all the precautions which have been taken to restrain and check the law-making power of our legislative bodies, we are compelled to admit that the efforts have been in large part unsuccessful. A comparison of the legislation enacted during the first half of this century with that which has been enacted since is not reassuring. Judge Cooley, than whom I know of no one better qualified to speak, has expressed the opinion that the early legislation was in general more careful, more circumspect, and less open to criticism as encroaching on private rights or sound principles, than much of that more recent. And he declares that by far the larger part of all the doubtful legislation which the history of the country presents has taken place since the year 1846, "when radical ideas began to be characteristic of State constitutions, and the theory that officers of every department should be made as directly as possible responsible to the people after short terms of service was accepted as a political maxim." *

* *Princeton Review*, March, 1878, p. 236.

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It cannot be denied that in the United States there exists at the present time a general distrust of our legislative bodies. The people lack confidence in the intelligence, capacity, wisdom and integrity of the State legislatures. It is becoming a difficult matter in this country to induce men who are occupied in successful business enterprises, or who are engaged in lucrative professional practice, to sacrifice their personal interests by becoming members of the legislative assemblies of the States. They do not appreciate membership in such assemblies as an honor, and do not feel called upon to make the financial sacrifice which such service involves. It is too frequently the case, therefore, that men are chosen to these positions whose education. experience and standing in the community do not at all entitle them to such distinction, and who are not qualified to wisely discharge the very responsible trust committed to their keeping as law-makers for the commonwealth. It is also unfortunately too often the case that corrupt men secure their election to these legislative bodies for the money that can be made by selling legislation — by "sand-bagging" corporations.

In our earlier history it was considered a high personal honor to be a member of the law-making body of the State. The representative regarded himself as charged with grave personal responsibility respecting the enactment of law. He looked upon a public office as a public trust, and considered his election to the legislature as a kind of civic decoration bestowed upon him for his worth by the people of his district. The pay was small, the illicit profits nothing. The best men in the commonwealth were willing to serve it in the law-making body. We may well deplore that in these later times this has been so greatly changed, and that good men should feel so much reluctance about assuming the office of a legislator, thus giving opportunity to bad men to crowd themselves into public place "for what there is in it," without any sense of public duty or responsibility. Why has the "honorary" impulse to public service so largely lost its force in the States of the American Union? And why is it that public office has so largely ceased to be regarded by our law-makers as a public trust? Many reasons are given in explanation, and I shall venture to call attention but to a few.

1. The rise of great cities has undoubtedly had much to do in effecting the change referred to. Nearly half a century ago De Tocqueville saw in the size of certain American cities and in the nature of their population a danger threatening the future security of the Republic. Since that time our cities have grown until our urban population has become more than six times as great as when De Tocqueville wrote, and far more heterogeneous. The immigrants from foreign lands generally seek our cities, and there the several nationalities segregate themselves, living the old country life over, speaking their own language, clinging to their old ideas, practicing their old customs. Under such circumstances they do not easily become assimilated with us. The result is that in the cities especially, the *morale* of the voting constituency is much lower than it formerly was. The foreign vote is either in the majority, or when it is not it holds the balance of power and controls elections. The massing of large bodies

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of foreigners together affords an excellent opportunity to the machine politician, and votes are bought and sold without scruple. A man who buys votes to secure his election may as a general rule be depended on to sell his own when the opportunity presents itself. His moral sense is so blunted that even in cases where his vote is not purchased he can be pretty certainly depended on to vote on the wrong side of every question. A man prominent in political life has declared it to be his observation that nine-tenths of the city members of the legislature of his own State would, as a rule, be found hostile to any reform, and that the only hope of reform was in the action of the country members.

2. The growth of private corporations and of corporative power has been another influence whose blighting effect on the morality of legislative bodies has been marked. Not that the conception of a private corporation is an idea originated in our times, or even in modern times. We all know that such corporations existed among the Romans, and some have asserted that their origin is to be found in the laws of Solon. But however old the idea may be, it is within our time that these corporations have grown in number, in wealth, and in power, to such an extent as to make them formidable for evil throughout the country, and to constitute them a noticeable political and social phenomenon. Fifty years ago there was hardly a railway corporation in the United States, while now there are about two thousand such corporations, employing nearly a million of persons, and holding property worth more than $7,000,000,000. We have great express and telegraph companies, great manufacturing and mining companies, great insurance and banking corporations. All these the State has had to legislate concerning, and the corporations have found it desirable to use illegitimate as well as legitimate influence to prevent legislation hostile to their interests. To this end they have spent money to elect legislators friendly to their interests, and to defeat those deemed unfriendly. They have practiced bribery in legislative halls. And so notorious has all this become that certain great railroads are commonly reported as "owning" the legislatures of certain States. Thus has it been demonstrated not only that corporations have no souls, but that the legislatures of too many of our States have none either. In 1613, Chief Baron Manwood declared that corporations had no souls, and proved it after this fashion:

"A corporation is a body aggregate: none can create souls but God, but the king creates them, and therefore they have no souls."

3. The principle of rotation in office which prevails so largely in this country at the present time has not had a wholesome effect on the character of our legislative bodies. In this respect the practice of European states is quite different from our own; and in our own country quite a difference has existed between the practice of the North and the South. One reason why the South has had so much influence in the Congress has been due to the fact that it has kept its able men there, electing them and reëlecting them, thus giving them the experience necessary to make them useful and influential. In the North, on the other hand, it has been in recent times a sort of unwritten law that after one had served two terms either in Congress or in the legislature it was his

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duty to step aside and allow the office to be "passed around" as a kind of perquisite to the workers. The extent of the change which has come over the country in this respect may be inferred from a table which appeared in the New York *Nation* June 23, 1892, giving the statistics for the Legislature of Connecticut. It shows how this principle of rotation in the legislative office has gained ground steadily during each decade of the century. In the decade beginning in 1790 the number of representatives reëlected in Connecticut was 63.7 per cent.; in 1800 it was 54 per cent.; in 1810, 41.7 per cent.; in 1820, 26 per cent.; in 1830, 22.6 per cent.; in 1840, 12.7 per cent.; in 1850, 12.2 per cent.; in 1860, 12.7 per cent.; in 1870, 10 per cent.; in 1880, 9.3 per cent.; in 1892, 9.1 per cent.

The *Nation* is justified in asserting that this principle of rotation is in practice fatal to any theory of legislative responsibility, as it simply tempts a man of easy-going principles "to make the most of his 'good time' as a legislator." It opens no career of statemanship, and therefore no inducements for one to specially fit himself for political life.

But, we may inquire, what principles should control in the enactment of laws. Locke in his work on Civil Government declares:

"These are the bounds which the trust that is put in them by the society, and the law of God and nature, have set to the legislative power of every commonwealth, in all forms of government:

"*First.* They are to govern by promulgated established laws, not to be varied in particular cases, but to have one rule for rich and poor, for the favorite at court and the countryman at plough.

"*Secondly.* These laws also ought to be designed for no other end ultimately but the good of the people.

"*Thirdly.* They must not raise taxes on the property of the people, without the consent of the people, given by themselves or their deputies. And this properly concerns only such governments where the legislature is always in being, or at least where the people have not reserved any part of the legislative to deputies, to be from time to time chosen by themselves.

"*Fourthly.* The legislative neither must nor can transfer the power of making laws to anybody else, or place it anywhere but where the people have."*

I venture to add the following:

1. They must not violate the fundamental law of the State or Nation. Every legislator before entering upon the discharge of his duties is sworn to support the constitution of the United States, and, if he is to make State laws, the constitution of his State. If he votes in favor of the enactment of a law which he believes unconstitutional, he violates his official oath, wrongs the commonwealth, and betrays the trust reposed in him. In determining whether a certain measure shall be enacted into law it is his duty to consider whether the law proposed is in conformity to the constitution, and he is not relieved from that responsibility by the fact that the question may afterwards be submitted to the courts for final decision. And in the determination of this question of constitutionality the legislator and the judge are governed by somewhat different principles. If the legislator doubts the constitutionality of the pro-

*Locke on Civil Government, § 142.

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posed law, it is his duty to withhold his vote from it. But when the question of constitutionality comes before a court, the mere doubt of the judge is not sufficient ground for declaring it unconstitutional. Prof. James Bradley Thayer, of the Harvard Law School, in an admirable paper read at Chicago in August last before the Congress on Jurisprudence and Law Reform, maintains the proposition that in cases where the courts are called on to pass on the constitutionality of a legislative act, "*the ultimate question is not what is the true meaning of the constitution, but whether legislation is sustainable or not.*" The courts sustain acts which in the opinion of the judges themselves a true construction of the constitution would not justify in cases where it is not clear beyond a reasonable doubt that the legislature has exceeded its powers. If it is not clear beyond a reasonable doubt that the act in question is unconstitutional, it will be sustained by the courts. "A legislative act is not to be declared void upon a mere conflict of interpretation between the legislative and judicial power. Before proceeding to annul, by judicial sentence, what has been enacted by the law-making power, it should clearly appear that the act cannot be supported by any reasonable intendment or allowable presumption." *

Again: "It is but a decent respect due to the . . . legislative body by which any law is passed, to presume in favor of its validity, until its violation of the constitution is proved beyond all reasonable doubt." †

An accomplished lawyer, and former president of the American Bar Association, John Randolph Tucker, of Virginia, has expressed the opinion that the conscience of the legislator and of the executive should be quickened to a more strict observance of constitutional limitations even than the judge. He says:

"The legislator cannot justify a vote to make an act a law, on the ground that as judge he would not be justified in annulling its effect. For the legislator does not cross any forbidden line when he refuses to enact what he believes is repugnant to the constitution, and he knows every fraudulent motive which would make void his act, though screened from the judicial eye; he knows it, and God knows it; and he cannot enact what that motive makes void, without perjury of his soul, treachery to his trust, and treason to his God. The legislator and the executive can do no dutiful act, therefore, which they do not believe to be warranted in terms and in motive by the constitution they are sworn to support. Support is affirmative duty. The oath is not negative, that they will not pull down the pillars of the edifice; but that, as pillars, they will support and uphold it."

2. They must be just in principle. Legislation is a branch of ethics, and the legislator must have regard to ethical considerations. Filangieri, a learned Neapolitan who, a hundred years ago, wrote on the Science of Legislation, declared that the positive goodness of a law consisted in its conformity with the principles of morality and with the precepts of revelation. God and nature, he asserted, protected the rights of mankind, and no transitory expediency could

* The People *v.* The Supervisors, 17 N. Y. 235.
† Ogden *v.* Saunders, 12 Wheat. 213.

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justify their infringement.* The Aquiline law which rendered it no more penal to kill a slave than a horse, resisted an authority paramount to that by which it was prescribed.

Judge Dillon, in delivering his address as President of the American Bar Association, said at Saratoga, in 1892:

"Theoretically, and for many purposes, practically, we must discriminate law and morality, and define their respective provinces. But those provinces always adjoin each other, and ethical considerations can no more be excluded from the domain of law *in its every part* than one can exclude the vital air from his room and live."

Milton argues that to allow sin by law is against the nature of law, the end of the law-giver and the good of the people.†

Bolingbroke delares that the laws of nature are truly "the laws of laws," adding that if the civil laws are imperfect it is because they have been made without a sufficient and consistent regard to natural law.‡

Neither can I forbear asking your attention, somewhat at length, to what Mr. Carlyle has to say on this subject:

"A continued series of votings transacted incessantly for sessions long, with three-times-three readings, and royal assents as many as you like, cannot make a law the thing which *is* no law. No, that lies beyond them. They can make it a sheepskin act of Parliament; and even hang men (though now with difficulty) for not obeying it—and this they reckon enough; the idle fools! I tell you and them, it is a miserable blunder, this self-styled 'law' of theirs; and I for one will study either to have no concern with it, or else by all judicious methods to *disobey* said blundering, impious, pretended 'law.' In which sad course of conduct, very unpleasant to my feelings, but needful at such times, the gods and all good men, and virtually these idle fools themselves, will be on my side; and so I shall succeed at length, in spite of obstacles; and the pretended 'law' will take down its gibbet-ropes, and abrogate itself, and march, with the town-drum beating in the rear of it, and beadles scourging the back of it, and ignominious, idle clamor escorting it, to Chaos, one day; and the Prince of Darkness, Father of Delusions, Devil, or whatever his name be, who is and was always *its* true proprietor, will again hold possession of it—much good may it do him!

"My friend, do you think, had the united Posterity of Adam voted, and since the creation done nothing but vote, that three and three were seven, would this have altered the laws of arithmetic; or put to the blush the solitary cocker who continued to assert privately that three and three were six? I consider, not. And is arithmetic, think you, a thing more fixed by the Eternal, than the laws of justice are, and what the right is of man towards man? The builder of this world was Wisdom and Divine Foresight, not Folly and Chaotic Accident. Eternal law is silently present, everywhere and everywhere. . . . No pin's point can you mark within the wide circle of the all where God's laws are not. Unknown to you, or known (you had better try to know them a little!)—inflexible, righteous, eternal, not to be questioned by the sons of men." ‖

*Gætano Filangieri was born in Naples, in 1752, and his work, "La Scienza delle Legislazione," was written when he was thirty years of age. He died in 1788, in his thirty-sixth year. The work was translated into German, French, and Spanish. The first volume only was translated into English, in 1792.

†Milton's Works, vol. 2, p. 62.

‡Bolingbroke's Works, vol. 4, p. 180.

‖Carlyle's Works, vol. 12, p. 306.

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The design of all laws is to secure the happiness of the people, and we may rest assured that cannot be promoted by any law which violates the laws of morality or contravenes the principles of ethics.

When Mr. Bentham published to the world his Theory of Legislation it was confidently asserted by his admirers that its publication made an epoch and a revolution in the science of which it treated. But the civilized world has not yet accepted Mr. Bentham's principle that utility, and utility alone, is the criterion of right and wrong, and ought to be the sole object of the legislator. It is a mistake to base the approbation or disapprobation of a public or private act simply on its tendency to produce pleasure or pain. "He who adopts," says Bentham, "the principle of utility, esteems virtue to be a good only on account of the pleasures which result from it; he regards vice as an evil only because of the pains which it produces. Moral good is *good* only by its tendency to produce physical good. Moral evil is *evil* only by its tendency to produce physical evil."* It is only fair to add that by the word *physical* in this connection, Mr. Bentham includes the pains and pleasures of the soul as well as the pains and pleasures of sense. We cannot, however, accept his theory that it is wiser in general to follow the dictates of utility than the impressions of moral duty. On the general question whether a thing is right or wrong, it is safer to trust to the common feelings of mankind than to individual deliberation on whether more good than evil may be expected from a given action, more pleasure than pain, and that without any rule or standard by which the intensity of any pain or pleasure can be determined. We are furnished with no instrument by which we may take "the altitude of enjoyment, or fathom the depths of sorrow." It is safer for us to follow the beaten highway of morality which the common experience of mankind has approved, rather than some new way which that experience condemns but which we fondly imagine will in our case afford more pleasure than pain. "Socrates was in the right," says Bolingbroke, "to curse the men who first divided in opinion things that cohered in nature — morality and utility."

3. They must be suitable to the circumstances of the state to which it is to be applied. A law is not to be enacted simply for its supposed philosophical principle. Lieber has said that "no law is philosophical which does not grow out of the given circumstances — out of that society for which it is calculated." An ideal commonwealth cannot be created by the enactment of a code of laws ideally perfect. As Judge Cooley has expressed it:

"Law is only the public will authoritatively and effectively expressed; and it is a mere truism that the moral standard of the people must determine that of the laws instead of being determined by them. The laws must necessarily express the prevailing opinions and purposes of the people who make them, and not of any more enlightened and virtuous people who at some future time may be their successors. In this postulate may be seen the reason why the law cannot be an educator of the people; it would be the people teaching themselves through the law; the teacher giving himself instruction." †

* Bentham's Principles of Legislation, p. 3.

† An address given at the commencement of the Law and Dental Schools of the University of Michigan, March 26, 1884.

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Not only is it idle to talk of legislating people into an ideal state by an ideal system of laws, but it is idle to suppose that, given such a system of laws, the people would consent long to be governed by them. Carlyle understood this when he wrote:

"The Constitution, the set of Laws, or prescribed Habits of Acting, that men will live under, is the one which images their Convictions—their Faith as to this wondrous Universe, and what rights, duties, capabilities they have there; which stands sanctioned, therefore, by Necessity itself; if not by a seen Deity, then by an unseen one. Other Laws, whereof there are always enough *ready*-made, are usurpations, which men do not obey, but rebel against, and abolish at their earliest convenience."

A writer on the English Constitution, Walter Bagehot, has said that the United States could not have become monarchical, even if the Constitutional Convention had decreed it, and the component States had ratified it. "The mystic reverence," he says, "the religious allegiance, which are essential to a true monarchy, are imaginative sentiments, that no legislature can manufacture in any people."

The law-makers of a state are ordinarily men born within the country for which they legislate, moulded according to its customs and traditions, and influenced by the prejudices of their environment. They are the creatures, not the creators of their age. Legislative reforms do not, as a rule, originate with them. They do not lead public opinion, nor even keep abreast of it, being generally quite in the rear of it. It is not often necessary to caution them against ideal legislation, or to remind them that Solon in his wisdom did not undertake to give the Athenians the *best* laws, but only the best they were able to bear. Law-making is therefore "the science of adaptations." The laws of Lycurgus were not made for and would have been unsuitable for Athens, just as the laws of Athens would have ruined Lacedæmon, being wholly unsuited to its needs and conditions. The laws which were administered at Rome are not the laws which could be administered in London. The laws which may answer the needs of the peoples of Asia, or the peoples of Japan, are not those which are needed in or would be tolerated by the people of the United States. The constitution of the government, the character, customs and religion of the people, the climate and position of the country, are all circumstances which the wise law-maker must consider in the enactment of law.

4. They should observe great care in the clearness and precision of the language used in the law to be enacted. According to Bacon, "A conceivable perfection of a law consists in the clearness and precision of its terms," and in this particular the greatest of legislators have often failed. The careless manner in which many of our State and Federal laws are drawn is a reproach to our law-making bodies. They should not be drawn by persons inexperienced in the law, and in the rules of judicial construction. What right has one, for example, to draft a penal statute unless he is aware that penal statutes are by the courts strictly construed? Or what right has one to draft a statute in derogation of the common law unless he is familiar with the same principle? How can one intelligently use the word "may" in a statute unless he knows under

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what circumstances the courts construe it to be peremptory in its meaning and not merely optional? And how can he use the word "shall" intelligently unless he knows the rule by which the courts are governed in determining whether the word is to have a mandatory or merely a directory meaning? It would seem to be desirable to make it the duty of the law officer of the government in each State to examine every bill before it is finally enacted into law, to the end that the language used may be clear, definite, precise, and appropriate to the purpose of the legislative body. The complaints which judges have made on this subject have been many and bitter. They are constantly called upon to construe statutes drawn by amateur and incompetent legislators, and as one of them has expressed it, the task "sometimes involves the necessity of harmonizing apparently inconsistent clauses," and making sense of "provisions cast together haphazard by different minds differently constituted, and looking to the different and special objects without due regard to the harmony of the whole." Lord O'Hagan, whose criticism it is that I have quoted, expressed in his capacity as judge the wish for some department "by which bills, after they pass committee, might be supervised and put into intelligible and working order." The Governor of the State of New York some years ago recommended the Legislature of that State to create such a department. In France, under the Empire, it was the practice to have the phraseology of all bills passed by the chambers closely examined by the Council of State, and every precaution taken to make them clear and precise in their terminology, as well as to have them consistent with the existing statutes. But we are told that under the existing order of things that country now suffers from carelessly framed laws. Any member of the chamber is at liberty to amend a bill in any sort of language, provided only he can secure the requisite number of votes. In Switzerland bills are carefully prepared by the Federal Council. The right of initiating legislation belongs to any member of the law-making body. He can bring the matter to the attention of the chamber to which he belongs, and if it is approved that body recommends to the Federal Council that it shall draw up and present a bill to the Assembly on the subject thus referred.* In England Sir Frederick Pollock tells us that—

"Many an act of Parliament, originally prepared with the greatest care and skill, and introduced under the most favorable circumstances, does not become law till it has been made a thing of shreds and patches hardly recognizable by its author, or to any one with an eye for the clothing of ideas in comely words, no less ludicrous an object than the ragged pilgrims described by Bunyan: 'They go not uprightly, but all awry with their feet; one shoe goes inward, another outward, and their hosen out behind; there a rag and there a rent, to the disparagement of their Lord.'"

I take it that this description is not less applicable to the condition of bills which have passed the legislative bodies of this country, including the Congress of the United States.

It must be conceded that there is a disposition in the law-making bodies to over-legislation. This country, like other countries, has suffered much in this

*Adams and Cunningham on The Swiss Confederation, p. 47.

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respect. The law-making power should be humbled by the thought that the great reforms which have been effected in the laws have generally been accomplished, not in doing some new thing, but in undoing something old. For instance, the reforms which Sir Samuel Romilly accomplished in the criminal laws consisted in securing the repeal of laws previously enacted, and which imposed the penalty of death for upwards of two hundred offenses. The reforms in matters pertaining to religion have consisted in the repeal of the laws enacted to compel uniformity in religious belief, and designed to make people religious by law by requiring them to attend religious services, and to contribute to the support of religious bodies. So in reforms pertaining to trade, it will be found that they generally have consisted in undoing what some preceding legislative body had enacted, as witness the repeal of the laws regulating the wages of labor repealed in England, and the laws regulating the prices of commodities repealed in that country, and laws regulating the interest on money repealed in the same country. It was the repeal of the Corn Laws which created anew the industrial life of that great nation.

To such an extent has that country been helped by the undoing of what the law-making bodies had previously enacted, that the author of the History of Civilization in England has been led to say that "The most valuable additions made to legislation have been enactments destructive of preceding legislation; and the best laws which have been passed, have been those by which some former laws were repealed." *

We are told by Demosthenes that among the Locrians the proposer of a new law wore a rope about his neck, signifying that if his measure should fail to work well in practice, he was willing that his life should be sacrificed. This has led Mr. Depew wittily to declare that if such a rule prevailed with us, "the multitude of executions would enforce, as no other experience could, that wise maxim: 'That government is best which governs least.'" †

The number of bills and joint resolutions introduced into the House of Representatives during the First Session of the Fifty-first Congress was 12,402, while the number introduced into the Senate was 4,570—making a total of 16,972. Fortunately for the country, only 1,335 passed both houses. It is safe to say that if the principle prevailed with us that prevailed with the Locrians, the number would have been very materially less. But it would be quite unsafe to allege that there was a single member in either house who read through not every bill that was introduced, but every bill that was passed. And it is perfectly safe to say that there were many members in both houses who would not have understood every bill if they had read them. This is not said in any offensive sense. To legislate intelligently the law-maker must know accurately what the existing law on the subject is, and he must understand exactly what changes in it the law proposed will accomplish. Legislators may be men of learning and ability, and yet not possessed of the qualifications necessary to make them in all cases intelligent law-makers.

* Buckle's History of Civilization, vol. 1, p. 200.
† Depew's Orations, p. 435.

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Law-givers have been called *principes perpetui*, because they continue to rule after their death in the laws which they have established. Bacon, expressing his opinion on gradations of honor, names:

1st, The founders of states.

2d, Law-givers.

3d, The deliverers and saviors of a country after long calamities.

4th, The fathers of their countries, which are just and prudent princes.

5th, Lastly conquerors, "which is not to be received amongst the rest, except it be where there is an addition of more country and territory to a better government than that was of the conquered."

To make the laws of a nation or of a state involves a tremendous responsibility, and to be intrusted with such power should be recognized as one of the greatest honors that can be attained. That men should have been ambitious in previous ages to be enrolled in the number of legislators with Solon, Lycurgus, Numa, and Justinian, is not surprising. The splendid words of Gibbon afford a sufficient explanation of such aspirations. "The vain titles of the victories of Justinian," he says, "are crumbled into dust, but the name of the legislator is inscribed on a fair and everlasting monument."

NATURALIZATION LAWS.

BY ROBERT B. SPILMAN.

The subject which it is proposed to discuss in this paper is one which does not often present itself in a practical way to lawyers in every-day professional life: controversy seldom arises out of it to be settled by the sharp contention of legal argument before court or jury, and to most lawyers it never presents itself as an existing fact, except when the court, in the midst of ordinary business, stays the dispensing of justice long enough to make an American citizen with that neatness and dispatch which has come to be characteristic of that proceeding. Therefore, while naturalization laws are a part of that vast domain of law with every portion of which provincial lawyers are expected to be familiar, yet the subject interests them as citizens rather than as lawyers. But because we are citizens before we are lawyers, and because by naturalization those who are not "natives and to the manner born" acquire all the rights of citizens, and because further, lawyers are generally expected to suggest needed changes in existing laws, and by agitation and argument secure their adoption, a brief discussion of this subject may not be deemed wholly out of place on such an occasion as this, and before such an audience.

Every nation of which any record is found in the pages of history has placed a high estimate on its citizenship, and has guarded by law the gateway

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of admission to its rights and privileges. In the palmy days of Rome to be a Roman citizen was greater than to be a king, and by those who belonged to nations subjugated by Roman power it was eagerly sought, and when once obtained by them they were not slow to demand the advantages it conferred. It was the policy of Rome, in its desire to admit worthy members of every conquered nation to its citizenship, to strengthen as well as extend its power. In pursuance of this policy even the despised Jew was not rejected. And so it happened that when the commander of the Roman garrison at Jerusalem, then a province of the Roman Empire, had caused one Paul, supposed to be a common Jew, to be arrested on a charge of inciting a riot in the streets of the city, and had ordered that he have a preliminary examination, a part of which was by scourging, Paul said to the officer who was about to execute the order, "Is it lawful to scourge a Roman citizen before conviction and sentence?" The question implied the assertion by Paul of his Roman citizenship, and needed no answer from the officer, who well knew the purport of such an assertion if true, and who hastened to warn his chief of the civic character claimed by the man with whom he was dealing. The commander was himself a naturalized citizen of Rome, having acquired this right, which he called freedom, by paying a large sum of money, in addition to complying with the other requirements of the Roman law. And when in response to his anxious query, he was assured that Paul was not only a Roman citizen, but was such by birth, he was alarmed for himself because he had caused a Roman citizen to be bound and ordered him to be scourged, an indignity to which no Roman citizen could lawfully be subjected. The proceedings in that preliminary examination were thereafter conducted with all due regard to the rights of a Roman citizen.

The Englishman engages in trade in every part of the world, with the confident assurance that he always and everywhere is under the protection of his government, and that any infringement of his rights, personal or pecuniary, will be promptly redressed, by armed force if necessary, and ample reparation be demanded and obtained. The old English theory of citizenship was, "Once an Englishman, always an Englishman." The privileges of citizenship were esteemed to be of too exalted a character to be voluntarily surrendered, its duties too exacting to be avoided, and hence the right of expatriation was long denied to every one born a subject of the British Empire.

There is no brighter page in the history of the intercourse of the United States with foreign nations, than that on which is recorded the affair of Martin Koszta, and the diplomatic discussion which it occasioned. Yet Martin Koszta was only an unknown Hungarian, who having been implicated in an unsuccessful revolt of his people against the Austrian government, fled to America, and having taken the initial steps to become an American citizen, returned to Europe and was seized by order of an Austrian consul at the port where he landed, and carried on board an Austrian frigate. The immediate result of this arrest was a grand exhibition of the courage of an officer of the American navy, who immediately prepared to attack the Austrian frigate unless Koszta should be without delay released. The ultimate result of the discussion which followed was a triumphant vindication of the right of a man of foreign birth to acquire American

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citizenship, and his further right, when equipped with the privileges thus acquired, to the protection of the Government of the United States against any demand made upon him by the government of his native country. Our Government has always been very jealous of the rights of those subjects of foreign powers, who have come to this country, thrown off their allegiance to the government of their native land, and assumed the obligations of American citizenship; and no foreign government now dares to interfere with one of its former subjects who comes to its shores with a passport from our department of State, which protects its bearer wherever he goes with the ægis of American citizenship.

It is but natural that a right which carries with it such extensive privileges as does citizenship in this great Republic, should be eagerly sought after. I shall not weary you with statistics of foreign immigration. You are familiar with the fact of the vast influx of citizens of other countries who have flocked to our shores during the last thirty years. You will recall the discussion to which this fact has given rise, in Congress and in the press, as to the expediency and probable necessity of somehow restricting this great inflow of unassimilated material into the body politic — discussion which thus far has produced very little practical result. Two facts out of many will serve to impress our minds, for the time being, with the magnitude of this subject. During the last decade more than five millions of foreigners have landed in this country with the purpose of remaining, and during the past three years twenty thousand persons of foreign birth are reported to have become naturalized American citizens in the city of Chicago alone. Not all of those who come to this country take the necessary steps to become citizens, but most of them do. We should naturally expect that those who so willingly throw off their allegiance to the land of their birth, for the sake of the rights and privileges of American citizenship, would prize it highly when obtained. But it is a matter of common observation, that men seldom place a high value on that which is easily acquired and costs but little. May it not therefore be profitable to inquire, whether the entrance into the sacred temple of American citizenship has not been made too easy? — whether in fact the gates of Castle Garden have not, upon too easily oiled hinges, opened always inward?

We, who like Paul are free born, prize our citizenship most of all, because it is our birthright. Would we not hold this birthright in higher honor, if we guarded more jealously and surrounded with stricter limitations, the way of access to its privileges? Would not those who acquire these privileges otherwise than by birth, place a higher value on them if they were not so easily acquired; if a longer period of waiting, and more careful preparation for the exercise of the duties of citizenship, were necessary before it was obtained? These two queries suggest the thoughts which I desire to emphasize in this discussion: First, the necessity that our laws in regard to immigration should be changed in the direction of more careful scrutiny of the character of those who wish to come, and the admission of those only who will probably make good citizens; second, that the requirements preliminary to the admission to citizenship of those who are thus permitted to come to our shores as permanent residents, be made more stringent and exacting; and third, and as correlative to these two

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propositions, that the right of suffrage, which is the full ripe fruit of the flower of citizenship, should be granted to those only who have complied with all these preliminary requirements. Under the constitution, all legislation in regard to immigration and naturalization is reserved to Congress, and to Congress therefore must appeal be made for any change in the laws governing the admission of foreigners, either to residence or to citizenship. But it is not a far journey from the people to Congress, and it is one which has been often traveled by reforms in our laws. This Association is now represented in both houses of Congress, and judging the future by the past, more of its members may be expected to reach that goal in the near future. This Association therefore occupies as favorable a position as could be desired, to take the initiatory steps toward securing such legislation in this direction as is needed to meet the demands of the times.

The subject of naturalization demanded the attention of the first Congress at a very early period in its deliberations, and within a year after its first meeting a law was passed to establish a uniform rule of naturalization. By the terms of this law, two years' residence in the United States, one of which must have been in the State where he was admitted, coupled with proof that he was a man of good character, was all that was required of a person of foreign birth preliminary to his admission to citizenship. By subsequent legislation at different times, the law has been changed until it has arrived at its present form, the salient features of which are five years' residence in the United States, a sworn declaration of intention to become a citizen, to be made at least two years before admission to full citizenship, and proof on the part of the applicant not only of good character, but that he is attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same. It needs no argument to establish the proposition, that the conditions surrounding those who discussed the question of naturalization a hundred years ago were vastly different from those that now exisist. Just emerging from the war of independence, the new nation was rich in nothing except a vast expanse of fertile territory waiting for inhabitants, and it was only natural that the statesmen of that day should feel disposed to encourage immigration by every legitimate means, and to offer citizenship in the new Republic with the fewest possible restrictions. And yet on this, as on most subjects which demanded the consideration of the statesmen of that period, great wisdom was manifested. It is interesting to study the discussion which preceded the passage of the first naturalization law, and observe the wide range of vision with which those who participated in it looked at the subject, and their exalted conception of the dignity of American citizenship. There was on the one hand the desire, naturally strong under the circumstances then existing, to strengthen as rapidly as possible the material interests of the country, and by encouraging immigration to stimulate its growth and prosperity; on the other hand there was the earnest purpose to maintain the high ideal of republican government and citizenship therein, which had ever been before their minds during its organization. And in this discussion we may find statements of principles which are possibly even more apt in the conditions at present existing in the country than in those of a hundred years ago.

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One member of Congress said that he hoped to see the title of citizen of America as highly venerated and respected as was that of old Rome, and rather than admit the common class of vagrants, paupers, and other outcasts of Europe, he would trust to the natural increase of the population for inhabitants. Mr. Madison, afterwards President, who was then a member of the House of Representatives, while conceding that it was very desirable that they hold out as many inducements as possible for the worthy part of mankind to come and settle among them, insisted that this was not desirable, merely to swell the number of people, but to increase the wealth and strength of the community. And he expressed in a nutshell the true theory of naturalization, when he said: "I should be exceedingly sorry that our rule of naturalization excluded a single person of good fame who really meant to incorporate himself into our society; on the other hand, I do not wish that any man should acquire the privilege, but such as would be a real addition to the wealth and strength of the United States." Another Representative, speaking as to the length of time that should elapse before the rights of citizenship should be conferred, said: "I would let the term of residence be long enough to accomplish two subjects, before I would consent to admit a foreigner to have anything to do with the politics of this country: First, that he should have an opportunity of knowing the circumstances of our government; and second, that in consequence he should have acquired a taste for the principles we hold and for this kind of government." All were agreed that it was very desirable to encourage the coming-in of all those who would make good citizens of a republic, but they were also unanimously of the opinion, with emphasis, that in adopting a rule of naturalization it was essentially necessary that the name of American citizen should be made and kept in the highest degree honorable.

Under the conditions then existing, both in this country and in foreign countries, the probationary residence then agreed upon was probably long enough, but since that time, and even since the time when the residence now required was fixed by law, those conditions have materially changed. The political situation in the Old World is now such as to render emigration desirable to a much larger class of people; means of transportation across the ocean have been greatly increased in capacity, and at the same time so cheapened in cost that it has become possible for persons of even the most limited resources to come to this country; while on the other hand, the inducements held out by our own homestead law, and the high rate of wages paid for labor of all sorts in this country, information in regard to which has been widely disseminated through all parts of Europe by the agents of railroad corporations, steamship companies, and even of some of the States of the Union, have served to stimulate in those who are already dissatisfied with the conditions surrounding them in their native land, the desire to better their condition by coming to this country. So that in the last three decades more foreigners have landed on our shores than came during the whole preceding seventy years of our national existence. And while this fact has challenged the attention of some of our statesmen, no legislation looking to effective restriction has been enacted, other than a law to prevent the importation of immigrants under contract to perform labor in this country,

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until the fear of an epidemic of cholera very recently led to a measure temporarily restrictive in its character. And while this vast tide of foreign immigration has been flowing in upon us, practically without restriction, many of the States have weakened the force of the existing law in regard to naturalization, so far as its political effect is concerned, by allowing foreigners to vote, after a comparatively brief residence in the State, upon making the preliminary declaration of intention to become a citizen. In Kansas, for example, a foreigner, no matter what may be his previous character, social condition, or political convictions, may land at Castle Garden on the 1st day of May, come directly to Kansas, take up his residence and declare his intention to become a citizen, and then vote at the next general election in the following November.

What has been already said seems logically to lead to and justify three practical suggestions:

First—Taking as a fundamental principle the statement already quoted from Mr. Madison, that no man should be permitted to acquire the rights and privileges of American citizenship, except as such would be a real addition to the wealth and strength of the United States, all who properly appreciate the priceless value of those rights and privileges, regardless of party affiliations and partisan prejudices, should unite in earnest efforts to secure the passage of laws which should so restrict immigration from foreign countries that criminals, paupers and anarchists should be absolutely prevented from entering this country under any conditions whatever. Such persons can add nothing to the wealth or strength of the country, for a mere voyage across the ocean will not change their character. As they embark, so will they land. And he who was a criminal or a pauper in his own country would in all probability continue to be a criminal or a pauper in this, and, instead of adding to the wealth or strength of this country, would become at once a source of expense and an element of weakness. As for the anarchist, whose hand like that of Ishmael is against every man, and whose voice is against all authority of law and all the restraints of society, that he certainly will not add to the wealth or strength of the nation he has already more than once shown by overt acts of lawlessness, which have only been curbed by the interposition of the strong arm of the criminal law. This Government of ours was founded on law, and has grown under and by law, to its present commanding place among the nations of the earth, and that place it can retain only by a continued regard for law. The anarchist regards law as an engine of oppression, and would if he could wipe out all law, subvert the Government, and gladly welcome that condition of political chaos and ruin which would be the inevitable result. It is deemed wise that those who are suffering from infectious diseases of the body should be excluded from our ports, or at least kept in quarantine, until they will no longer endanger the health of the people by mingling with them. With how much greater reason should those be entirely excluded from this country, whose minds are infected with a political disease of a most malignant character, which if it once gained a foothold on our shores, and spread among the people, would in the end destroy our free institutions, which are the result of more than a century of struggle and growth under the reign of law.

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Second—Taking for another fundamental principle, the substance of that other declaration of the statesmanship of a hundred years ago, to which reference has already been made, that a foreigner before being admitted to have anything to do with the politics of this country should have an opportunity of knowing the character of the Government under which he has come to live, and the political principles which control its administration, and in consequence of such knowledge should have become intelligently convinced of the wisdom and truth of those principles, there should be earnest, concerted advocacy of such changes in our naturalization laws as would require, before admission to citizenship, a longer period of probationary residence, together with such an acquaintance with the English language as would make it possible for the applicant to read the Constitution of the United States, and understand its provisions to such an extent that he could appreciate correctly the general character of our Government and the fundamental principles which control its administration. Is it too much to ask that a foreigner, wholly unfamiliar with our language, more ignorant of everything pertaining to our form of government than an American-born child at seven years of age, should spend ten years in preparing himself for an intelligent exercise of the rights of American citivenship? I do not forget that many persons of foreign birth, who may have had superior advantages in their own country, or who are naturally possessed of superior mental abilities, might in the future, as has been done in the past, become fitted for American citizenship in much less time than ten years; but the number of such persons is small, compared with the whole number admitted, and any rule adopted in regard to this matter must necessarily be uniform in its character and operation, and should be adapted to meet the necessities and requirements of the great mass of those who are to be governed by it. It may be suggested that under our present law, before a foreigner can be admitted to citizenship he must make proof, to the satisfaction of the court admitting him, that he is attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. So indeed the law is written, but not so in fact is it enforced. It is probably within the observation of every lawyer, certainly within the knowledge of every one who has sat as judge of a court having authority to admit to citizenship, that the process of inquiring whether the applicant possesses these very essential qualifications, has become largely a matter of mere form, and to often is so farcical as to provoke a smile from all who happen to hear what is going on. Two or three examples, which are vouched for as actual occurrences, may serve to illustrate this point. A native of sunny Italy, who was an applicant for citizenship before a court in New York city, when asked, "Who is President of the United States?" promptly responded, "Tamanna Halla." In a Kansas court a gentlemen of Teutonic ancestry was asked by the possibly too inquisitive judge, "Do you believe in a republican form of government?" and his reply was, "Yah; I vote always dot Republican ticket." And again in Kansas, in one of the western counties, an aspirant for the honor of American citizenship of Scandinavian descent was asked if he was attached to the institutions of this country, and his frank answer, without any reservation, was, "Yes, all except the chinch-bug."

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When a man presents himself for admission to citizenship, who cannot understand the questions propounded by the court except through the medium of an interpreter, and whose witnesses are sometimes in the same condition, does it not seem unreasonable to expect that he has any intelligent idea of the principles of our form of government? And yet the questions when asked in the perfunctory manner which usually characterizes them, are usually answered so that the order can be and is made for the admission of the applicant to all the rights and privileges of citizenship, when it is apparent that he has no intelligent conception of either. But if the statesman of a hundred years ago were present, he would doubtless remark that the name of American citizen is not thus rendered honorable. It must be conceded, that any court might adopt a strict construction of the present law, and require any applicant to pass such an examination as would show just how much, or how little, he knew about the principles of government embodied in the Constitution, and might refuse to admit anyone who did not fulfill the letter of the requirements of the law. But such action on the part of a single court would avail nothing toward remedying the evil of too indiscriminate admission to citizenship, and the applicant himself would speedily seek and find some other court, where the examination would be adjusted to the necessities of the occasion, and the capacity of the applicant. Besides, in States like Kansas, where the right of suffrage is conferred coincident with the declaration of intention to become a citizen, the refusal of the court to admit to full citizenship would really deprive the applicant of no substantial right. Any effort looking to reform in this matter, to be effective must be general in its operation and uniform in its scope. Such generality and uniformity can never be attained under existing laws. Let a naturalization law be enacted which shall require at least ten years' residence before admission to citizenship, and further require the applicant to show by the testimony of witnesses who have themselves been citizens for at least one year, that he is a man of good character, that he has an intelligent understanding of the English language, both written and spoken, and has read the Constitution of the United States; and it would then probably be unnecessary to propound any formal questions, as to his attachment to the principles of the Constitution or his liking for our form of government. Few men after so long a residence and such an acquaintance with our language and the character of our political institutions, would apply for citizenship unless they had become identified with the people of this country in thought and feeling.

The third suggestion in the line of needed reform in regard to the matter under consideration is, that no foreigner should have the right of suffrage conferred upon him until he has been admitted to full citizenship. Among the rights and privileges of citizenship, in a constitutionally-governed nation, none has a higher place than that of suffrage. It is not too much to say, that the perpetuity of such a government depends on the honesty and intelligence of those of its people who by virtue of having the ballot in their hands are its governing class. The greatest danger that menaces this nation to-day is the ballot in the hands of the vicious and the ignorant. I would not for a moment contend that vicious and ignorant voters are found only among those of foreign

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birth; but that this class of voters is being greatly increased every year from the ranks of foreign immigrants cannot be denied. And whatever may be the difficulty surrounding the subject in other directions, further increase in this direction may be limited by proper discussion and concerted action. In our own State this can be done only by constitutional amendment. During the past few years many very cogent reasons have been urged why we should have a new constitution in this State. None can be urged with any more force than the one now suggested, that it is for the best interests of the State that the right of suffrage should be granted only to those who have been admitted to full citizenship. There is apparently a growing sentiment in this country in favor of granting the right of suffrage to women, upon the same conditions and under the same restrictions as the right is now held by men. This question is to be settled in this State, for the present at least, at the next general election, by the vote then to be taken on the constitutional amendment submitted to the people by the last Legislature. A strong argument, which is effectively urged by those who advocate this measure, is that it is a great injustice to grant the right of suffrage to a person of foreign birth however ignorant he may be of our language or politics, upon his declaration of intention to become a citizen, and to withhold the right from the intelligent, patriotic women of Kansas. If our constitution had been less liberal than it is to citizens of foreign birth, in regard to the right of suffrage, this argument could not now be used with such telling effect in support of the pending constitutional amendment. Whether this amendment be carried, or not, it is a matter of paramount importance to the future political welfare of our commonwealth that citizens only shall be allowed to vote. And this will be especially true if this amendment shall be adopted and the right of suffrage extended to women. The pride of this nation is its free-school system, which, in all its departments, from kindergarten to university, is maintained at public expense, primarily and chiefly that the youth of this country, when they attain the age of majority, may be qualified for intelligent citizenship. While thus sparing neither pains nor expense to furnish those who were born here, and those who come into this country in childhood, with the educational equipment which is deemed essential to make them intelligent voters, when they arrive at the proper age, ought we not as wise protectors of our fabric of government, for ourselves and especially for those who are to come after us, to work together to the end that persons of foreign birth shall not have the right to vote until they have passed the period of probation and sustained the examination which may be required to entitle them to admission to full citizenship in the United States? Whatever may have been the considerations which led the framers of the constitution of our State to insert in it the provision that persons of foreign birth may vote after six months' residence, upon declaration of intention to become citizens, such considerations exist no longer, and if we are not to have an entire new constitution, the next amendment submitted to the people should be one restricting the right of suffrage to those only who have been admitted to full citizenship.

In conclusion, let me commend to the thoughtful consideration of the members of this Association, not only as lawyers but as citizens, the subject which

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has been very imperfectly and only suggestively presented in this paper in its three-fold aspect: Exclusion from our shores of all undesirable elements; elevation of the standard of qualification for admission to full citizenship; and restriction of the right of suffrage to citizens only. The subject is one which in some one or all of its aspects has already attracted the attention of some of our profoundest thinkers and wisest statesmen, without regard to their political belief, and concerning which there is much earnest discussion, in current literature and in legislative halls. The lawyers of Kansas ought not to be the last to enter the arena of this discussion. In this as in all great reforms, Kansas ought to lead rather than to follow.

MUNICIPAL BONDS.

BY A. A. GODARD.

The question as to when and under what circumstances municipal corporations should be permitted to mortgage the future, and incur liabilities to be liquidated by a succeeding generation of tax-payers, is one to which no satisfactory answer can be given, and upon which there are many and varied theories. A citizen with a soul filled with hope for the future, impressed with the firm belief that his little town will soon be a great metropolis, who tells you with the greatest assurance that a boom is only a natural growth, will deposit his vote in favor of giving aid to the most chimerical scheme, and then proudly proclaim the fact that he is a public-spirited citizen; while those who do not favor giving the proposed aid are apt to quietly deposit their ballots and slip away, at which the aforesaid public-spirited citizen sniffs contemptuously, and calls them old fogies. In times of great excitement there may not be much difference of opinion upon the expediency of granting municipal aid in certain directions, but the opinions of individuals and municipalities upon these subjects change, and we may look around us and see cities and towns whose inhabitants are mourning with a deep and sincere regret the day when they briskly and cheerfully went to the polls and took upon their shoulders the burden which has since grown heavier and heavier. Occasionally the load becomes so burdensome that a representative of one of these communities appears in a lawyer's office asking if there is no relief. If litigation follows, the holders of the bonds accuse the municipality and its people of being repudiators, but no twinge of conscience can reach the soulless municipal corporation, and none does reach its inhabitants.

The municipal indebtedness of this country is so vast that the figures, if given here, would be but bewildering. The subject of this paper covers a very large percentage of the total indebtedness of the United States, and, looked upon from another side, it constitutes an enormous portion of the wealth of the country, and furnishes what is usually a prudent and profitable investment for

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individuals, trustees, and corporations. The wisdom of these issues can now be judged by facts and circumstances which have already passed into history. We can balance the benefits received against the cost; if the latter outweighs the former, the question is settled. If the benefits outweigh the expense, we may say that it was not a bad bargain; but where aid has been granted for purposes other than the express purposes of the corporation, we can seldom say that it was for the best, as no one can tell what the situation would have been had not the aid been granted, and the question is unanswerable.

Vast amounts of municipal bonds have been issued to aid in building the railways of the country. The propriety as well as the legality of such municipal and legislative action has been frequently discussed, and sound argument is adduced on both sides of both the economic and legal aspects of the case. On the one side it may be said that the aid is given to a private corporation; that these bonds are voted at an election at which the poorest non-tax-paying citizen, who votes for the aid hoping that he may obtain a situation as section hand upon the proposed road, has an equal voice with the tax-payer whose property contributes most largely to the enforced donation; that the officers and voters who fasten this burden upon the people are reckless with regard thereto, as they expect to receive the benefits themselves for which future officers and tax-payers must provide payment; that at such an election the promoters of the scheme can well afford the time and expense necessary to agitate public sentiment, while the opposition is inactive and unorganized. Then our attention may be called to the gigantic frauds that have been perpetrated upon the people by reason of the possession of this power, the false and frequently fraudulent manner in which railroads are built, and their monopolistic tendencies, and then to the millions upon millions of dollars of county, city and township bonds now outstanding which have been issued to aid these companies, and the argument seems unanswerable. But, on the other hand, when we behold the powerful influence of railroads upon our civilization, and realize that the United States owes its rank and position among the nations of the world more to the railroads than to any other material influence or agency, we feel that they are worth all that they have cost us.

But as courts are concerned with the construction and enforcement of laws rather than their expediency, so, as officers and attendants thereon, we are more interested in the law governing municipal bonds than in the propriety of their issue.

The law of municipal bonds, both as found in the statutes and in the reports of cases, is of comparatively recent growth, and as it exists in the United States is very largely peculiar to this country, being to a great extent concerned with that branch of our jurisprudence known as constitutional law.

When we remember that in a government like ours the supreme power is in the people, and hear a court decide that bonds issued by a municipal corporation in pursuance of a vote of the people of that corporation, authorized by an act which has been duly passed by the Legislature and signed by the executive, are void for the want of power to issue them, it would seem as if such court were transcending its jurisdiction. But we must remember that under our

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form of government the State is the unit—counties, cities and towns are the creations of the State; that all the powers of the United States Government are such as the States have conferred upon it; that the Legislature of a State has only such power as has been given it by the people, of those powers not previously granted to the United States, and that the subdivisions of a State have only such powers as have been rightfully granted them by the Legislature; that the people of a municipality have not any of the supreme power even in their own municipal affairs, but they have only such power, concerning the business of their organization, as the Legislature has granted them in pursuance of authority conferred upon it by the people of the State, and therefore, when a Legislature authorizes a municipal corporation to vote an indebtedness upon itself, the question arises: Have the people, in the constitution of the State, given the Legislature of that State power and authority to make such a law?

Professor Bryce, in writing of The American Commonwealth, and comparing the legislative bodies of this country with those of England, says: "The British Parliament is a sovereign assembly; it can make and unmake every law; change the form of government or the succession to the crown; interfere with the course of justice; extinguish the most sacred right of the citizen. In point of theory, it is the nation. The whole plenitude of the people's rights and powers resides in it. It is, within the sphere of the law, irresponsible and omnipotent."

In the United States the situation is entirely different; the Legislature of a State cannot infringe upon the powers granted to the United States, and can only exercise those powers which have been given it. It is, as it were, surrounded by a circle, within which its acts must be obeyed by the most influential citizen or the wealthiest and most powerful corporation; but when it steps outside this circle its enactments are void, and the justice of the peace holding the most primitive court, far from any center of civilization, is equally at liberty with the highest court of the land, to say that they need not be obeyed, and the meanest citizen may, with the utmost impunity, utterly disregard and ignore them.

As to whether or not a municipal corporation has the implied power to issue negotiable bonds for the express purpose of the corporation, is a question that is not yet definitely settled, though a majority of the decisions favor such a power. Some courts, however, distinguish between the power to borrow money to be used for such purposes, and the issuing of the bonds directly in payment for the benefit received, holding the latter valid but not the former; other courts have held the power legal when exercised by municipal corporations proper, but not when exercised by the *quasi* corporations, counties, townships, and school districts. Judge Dillon some years since expressed the opinion that municipal corporations did not have such power, but admitted that the weight of authority was against him. There seems to have been a reaction, however, and recent decisions of the Supreme Court of the United States incline toward the view expressed by Judge Dillon. The power to borrow money is not implied from the fact of the creation of a municipal corporation, but such power is sometimes

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incidental to powers expressly granted. Where, as in the State of Kansas, there are statutory limitations upon the mode of incurring indebtedness and the manner in which such indebtedness shall be paid, such implied power does not exist.

It is certain, however, that municipal bonds cannot be legally issued for any other purposes than those expressly conferred upon the municipality, without legislative sanction, and it is only within certain limits that such sanction can be given. It is well settled, that unless prohibited by the constitution, a legislature may, under its grant of general legislative power, authorize the issue of municipal securities for public purposes, and for such purposes only. One reason for limiting municipal indebtedness of this nature to public purposes is, that it involves the right of taxation. It is a fundamental principle of our government, that individuals are protected in the enjoyment of their property, except in so far as it may be taken for public purposes in one of two ways, either as a public tax, upon principles of a just equality, or for public use with a just compensation therefor. Property cannot be taken by taxation for private uses, or in furtherance of individual projects, and as the issue of municipal bonds necessarily implies taxation by which to pay them, it follows that such bonds can only be issued for public purposes. That, within the public purposes for which the Legislature may authorize the issue of bonds, are the ordinary and necessary purposes of a municipality, and that counties may issue them to aid in erecting court-houses and jails, or acquiring poor-farms; cities in acquiring public buildings for the use of their officers, or to be used as libraries, market-houses, etc.; or by boards of education and school districts for the purpose of erecting school-houses, in pursuance of such authority, is unquestionably legal; and for the Legislature to enact laws permitting the issue of such bonds is a proper exercise of legislative power. In some early cases decided by the courts of New York it was held that the Legislature was the exclusive judge as to what constituted a public purpose, deciding that the question was one of expediency with which the courts should have nothing to do; but the contrary doctrine now prevails universally, the courts holding the question to be one of constitutional law, and under this view they have held the building of railroads, the construction and grading of streets, the construction of water works, gas works, bridges, sewers, the erection of public mills, the providing of fire engines, the purchase and laying out of cemeteries, and other like things, to be public purposes; and on the other hand, they have held that bonds could not be issued to provide funds to be loaned to individuals to enable them to rebuild their burned houses, to equip and furnish manufacturing establishments, to construct private saw- and grist-mills, to improve water privileges and manufacture lumber, to establish a citizen in business, etc., as they are not public purposes.

It has been long since settled that aid can be legally voted to a railroad company. The question was determined in this State by the decision in the case of *The Board of Commissioners of Leavenworth County v. Miller*, decided in 1871, and reported in Vol. 7 of the Kansas Reports, the court holding that the term "legislative power," as generally understood at the time of the adoption of the constitution of the State of Kansas, included the right to authorize

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the giving of aid to railways; that this construction had then been adopted by the courts of twenty-one States and by the Supreme and other courts of the United States; and for these and other reasons held that the Legislature of the State of Kansas had such power. Subsequent to the adoption of our constitution, and prior to the decision referred to, contrary decisions had been made by the Supreme Courts of Michigan, Wisconsin, and Iowa. The Supreme Courts of Wisconsin and Iowa have since held such aid valid, and the United States courts have upheld the validity of such bonds issued in Michigan. The Supreme Court of Kansas has been called to pass upon the validity of bonds issued by municipalities for various purposes. It has held that bonds issued for the purpose of paying the current expenses of a county are valid. It has held that chapter 42 of the Laws of 1875, which attempted to authorize townships to issue bonds and invest the proceeds in provisions and grain for seed and feed which should be sold to destitute persons, taking in payment the notes of the parties receiving such aid, to be unconstitutional and void, the court holding that taxation for the purpose of paying such bonds was not for a public purpose; that while the relief of the poor and destitute is a public purpose, the ones to be so taken care of by the public are those unable to provide for themselves, and therefore a public charge. It has also decided that bonds issued in aid of a woolen mill are void, the purpose being a private one, and that where the county treasurer has money in his hands, collected for the purpose of paying interest on such bonds, he could not be compelled to pay the same over to the holder of the coupons calling therefor. Bonds issued for the purpose of promoting a water power and manufacturing enterprises have also been held void by this court, the purpose being declared a private one. On the other hand, bonds issued to aid in the building of bridges and sidewalks have been declared legal, the purposes being unquestionably public.

One of the leading cases involving the question as to what constitutes a public purpose which has been decided by the Supreme Court of the United States, arose over bonds issued within the State of Kansas. I refer to the case of *Loan Association v. The City of Topeka*, in which the opinion was written by Mr. Justice Miller. The action involved bonds issued by the city of Topeka to aid the King Wrought-Iron Bridge Manufacturing and Iron Works Company. The opinion contains a very interesting statement of the law concerning public purposes for which bonds may be issued, holding that the entire question is one of taxation, and following this with a statement of the reasons which have induced courts to hold bonds issued in aid of railroad companies valid. In discussing the purposes for which taxes may be levied, and in speaking of the enormous power that may be wielded by taxation, he mentions the tax of ten per cent. upon State bank circulation, and that the law had sufficient power to drive all of the State bank notes out of circulation within a very short time. In deciding this case he held that the purposes of the corporation receiving this aid were private; that the Legislature could not authorize municipalities to engage in a private manufacturing business, or tax its inhabitants to support such an enterprise, no matter how great the benefit the municipality might derive therefrom; that to do so is to permit the property of one individual to be taken

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from him by legal measures and given to another. Another case, similar to the one just mentioned, is that of *National Bank v. City of Iola*, decided by the Hon. John F. Dillon in the Circuit Court of the United States for the District of Kansas, in which bonds issued by the city of Iola to aid in the erection, completion and equipment of buildings to be used for manufacturing purposes were held void for the reason that the purpose was private, and for the additional reason that the act under which they were issued attempted to confer special corporate powers upon the city of Iola in violation of the constitutional provisions of the State of Kansas. Bonds issued to aid in the construction and equipment of a steam grist-mill, under the statutes of the State of Kansas making the same a public mill, were held valid by the Supreme Court of the United States; while in a similar case arising under the laws of the State of Nebraska, which do not make such provisions regarding the manner of operating mills, they were held void.

Shortly after the great fire in Boston, the Legislature of the State of Massachusetts authorized that city to issue bonds to an amount not exceeding twenty millions of dollars, the proceeds of which three commissioners appointed by the mayor were authorized to loan, in a safe and judicious manner, in such sums as they should determine, to the owners of land, the buildings upon which were destroyed by that fire, upon the notes or bonds of said owners, secured by first mortgages upon said land; the commissioners to have full power to apply the proceeds of said bonds in making the loans in such manner and to make such further provisions, conditions and limitations in reference to said loans and securing the same as should be best calculated in their judgment to insure the employment of the same in rebuilding upon such land burned over, and in the payment thereof to the city. In the case of *Lowell v. Boston*, reported in Vol. 111 of the Massachusetts Reports, the constitutionality of this act was called in question, and the court there held that the purposes were private; that the Legislature could not authorize the levying of a tax to pay either the interest or the principal of such bonds.

From the foregoing cases it will be seen that if the purposes for which aid is to be given are public, and therefore such as will justify taxation, the courts have no right to interfere with the action of the Legislature; and no matter how small the interests to be promoted, how slight the benefit to the public, or however disproportioned the results may be to the cost, the courts have no voice to declare the act void. But on the other hand, if the purposes are such as will not justify taxation, no matter how unanimous may be the public sentiment in its favor, how great the benefit to be incidentally received by the municipality, how deep the suffering and distress to be relieved, no preponderance of public favor or sentiment, or promises of public benefits to be received, should induce a court to hold the legislative act valid.

In deciding what are public purposes and what otherwise, courts seem to have formulated no rules by which they are to be governed, deciding each case according to the state of facts there presented. Judge Cooley says: "The settled practice of free governments must be our guide in determining what is a public use." The Supreme Court of the United States has said, through Mr.

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Justice Miller: "In deciding whether in a given case the object for which taxes are assessed is public or private, courts must be governed mainly by the course and usage of the government, the objects for which taxes have been customarily and by a long course of legislation levied." In fact, it would seem that no adequate rule can be enunciated; that each case must stand upon its own particular relation to the municipality viewed in the light of custom, usage, and the construction of the State constitution under which it may arise. Another reason why no rule can be laid down is the uncertainty of future legislation. While courts are attempting to set the limits within which taxes may be levied, legislatures are ever enacting skillfully-prepared laws with the evident intention of avoiding constitutional lines previously drawn, in order to make those purposes public which the courts would naturally hold to be private.

In the early history of railroad-building in the West, municipal aid was granted to companies engaged in building such roads with a recklessness that now appears astounding: legislatures passed numerous acts permitting counties, cities and townships to vote aid with little or no protection against fraud on the part of the officers of the municipality, or rascality on the part of the railroad companies, their officers and agents. As a result of this legislation great quantities of bonds were issued to aid roads that were never built; bonds were issued in excess of the amount voted or permitted by law; in some cases bonds were voted and issued exceeding in amount the assessed value of the taxable property in the district voting them. When the people of such communities came to realize what they had done and the situation they were in, they usually endeavored to avoid payment, and frequently they were able to successfully defend actions upon these evidences of indebtedness in the State courts. These bonds were usually negotiable in form, and when such securities were in the hands of innocent holders the United States courts were very reluctant to hold them void. These courts held that the purposes for which they were issued were unquestionably public; that as the municipal corporation had permitted the issue of the bonds, and if there was any fraud connected therewith, it or its officers were responsible therefor or had permitted the same, and therefore it, and not the innocent holders of the bonds, should suffer. They held also that where legislative authority was granted a municipality to issue bonds for a public purpose upon the happening of certain events or the existence of certain facts to be determined by the officers whose duty it was to issue such bonds, such determination was final in a suit by the *bona fide* holder of the bonds against the municipality. Judge Dillon, in speaking of this subject, says: "The Supreme Court of the United States has upheld the rights of the holders of municipal securities with a strong hand, and has set a face of flint against repudiation, even when made on legal grounds deemed solid by the State courts, by municipalities which had been deceived and defrauded. That such securities have any general value left is largely due to the course of adjudication in respect thereto by the Supreme Court, and the reliance which is felt by the public that it will stand firmly by the doctrines it has so frequently asserted."

The potion administered by the Supreme Court of the United States to many of these municipalities has been a drastic one; the result, however, has been

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most wholesome in its general effects and ultimate consequences. The later decisions of this court would indicate that it is becoming more strict in its construction of statutes attempting to confer power to issue bonds, and that its tendency now is toward denying implied powers to municipalities. This should have an effect in the direction of limiting the issue of municipal bonds to those purposes which are unquestionably public; and if they are issued in such cases only when the needs of a community require and prudence demands it, and not until the necessary legal steps have been properly taken, then such securities will be a safe and profitable investment, and the holder will know that every promise made in his bond will be fulfilled.

SHOULD THE PRESENT SYSTEM OF JURY TRIALS BE ABOLISHED IN THE UNITED STATES?

BY H. WHITESIDE.

In Illinois and some other States there is an old law on the statute books to the effect that in criminal cases the jury is "judge of the law as well as the facts." Though not often quoted, once in a while a lawyer with a desperate case makes use of it. In one case the judge instructed the jury that it was to judge of the law as well as the facts, but added that it was not judge of the law unless it was fully satisfied that it knew more law than the judge.

An outrageous verdict was brought in, contrary to all instructions of the court, which felt called upon to rebuke the jury. At last an old farmer arose.

"Jedge," said he, "were n't we to jedge the law as well as the facts?"

"Certainly," was the response, "but I told you not to judge the law unless you were clearly satisfied that you knew the law better than I did."

"Well, Jedge," answered the farmer, as he shifted his quid, "we considered that p'int."—*Green Bag.*

In selecting the subject mentioned in caption, I am not actuated by expectation that anything practical will come from its discussion. The system of trial by jury is so interwoven with our legal, political and social history, and is consecrated by so many centuries of association, that it would probably take generations of agitation and discussion to remove it, even if an attempt was made in that direction.

In selecting this subject no irreverence is intended to the past, for it may be conceded that the verdicts of Athenian *dicasts*, Roman *judices*, Saxon *compurgatores*, and the rude convocations of juries among the Teutonic and Scandinavian peoples, were in those days the most popular and just means of settling disputes known to the peoples who called such juries, and of which such peoples were then capable.

It not only may be considered, but must be admitted, that the importance of the form and purpose of the system as introduced or recognized in England during the reign of Henry II, and subsequently brought to a perfection resembling that of modern times, went a great ways not only in satisfying the aspira-

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tions of the English people, but protected the people from the tyranny of the king, the rapacity of the nobles, and time-serving corrupt officers.

There is no doubt that the system of trials by jury, among all peoples and in all ages where the power is held and law administered by tyrants and vice-tyrants, is a bulwark of protection and justice to the masses of the people. To the student of history the reasons are so obvious as to require no argument.

But do these reasons exist, and are not the disadvantages overbalancing in this age of enlightenment, this age of steam, electricity, and the printing-press, particularly in a country like the United States where we have a government of law only, where the people all stand on the level of equality under the law, and where every officer and agent of government is elected by the people directly or indirectly, and where the ballot is in the hands of every male citizen?

I ask this question only with reference to traverse or trial juries, as they are ordinarily understood, (viz., a body of twelve men who are selected from the people or tax-payers to act temporarily, and then discharged and returned to the mass of the people;) and my answer to the question is, that the reasons which once existed (and do now in some countries) in favor of jury trials, cannot apply to this country to the extent of securing approval in a theoretical view of the subject, and that the disadvantages of the system overbalance the good coming from it.

I will now state some arguments in favor of the answer:

In the first place, jury trials are accompanied with great expense to the tax-payers and to the litigants. A bare statement of this fact is comprehensible to every lawyer. In all large counties several panels are in attendance as regular jurors, and not infrequently bystanders are summoned or special venires issued. These men all get, approximately, the country over, $2 per day each, and mileage. Extra bailiffs are employed to summon and attend to them, and the temples of justice must be enlarged for their accommodation, and a large expense made to keep up, clean up and maintain this extra space on account of jurors. Trials before them are comparatively slow and tedious. No lawyer who tries a jury case will fail to put in more cumulative and low-grade testimony than before a trained court, and the result is a greater number of witnesses, longer attendance, and more process, and in general, a great increase of necessary costs proper to be paid by either the tax-payers or litigants.

It recently took six weeks at the city of Chicago to get a jury in the case of *Illinois v. Cohlin*, at the expense of tens of thousands of dollars and a great waste of time on the part of the multitudes who were called in to see if they would be accepted or qualified; and a similar experience in some degree is frequently undergone by every community of tax-payers. The aggregate amount of expense imposed each year on the tax-payers both in the shape of money and loss of time unnecessarily, by this system which has outlived its usefulness in the United States, is almost incalculable.

In the second place, trial by jury is uncertain in several respects. The jury not only may fail to agree or mix the findings of fact so that there is a mistrial, but while the members do the best they can, from the very nature of their quali-

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fications they butcher justice—not as a rule, but so near it that it is a subject of debate as to whether a majority of their verdicts in important cases is not wrong. The members as a rule are not thoroughly competent to understand the instructions of the court.

They are filled with prejudices and feelings incident to the locality, or possibly in regard to the subject-matter of the action or defense, or in regard to one party or other to the action. They cannot necessarily summarize, analyze, sift or weigh the evidence as well as a trained lawyer or judge. Is it any wonder, then, that in so many cases they make mistakes? Is it any wonder that their incompetency is presumed on by parties and attorneys, to the detriment of both law and justice, and that high and holy confidence, as it were, which the people should feel in courts of justice?

In the third place, as above indicated to some extent, the uncertainty, delays and expense of jury trials, diminishes the general respect of the people for law and order. How many persons take the law into their own hands because of the delay and expense of justice as administered by jury trials! And what a vast number defy the law, violate not only their contracts, but also their social duties, because they presume upon the clemency of jurors, and the difficulty of either the state or an aggrieved person getting justice at the hands of a petit jury!

These suggestions must make it clear that instead of permitting a speedy, economical, certain and just trial and decision of causes, the jury system prevents and obstructs such desirable results, and will do so as long as the system exists as now organized.

What argument, other than that the system is old and surrounded with a vast mass of political, legal and social associations, can be made in favor of jury trials in this country of law, equality, and manhood suffrage?

It may be said that the jury, though ignorant and full of prejudice, will, under the influence of justice *in the heart*, temper the law, while it would be rigidly enforced by an intelligent banc of judges. This argument should be addressed to a legislature rather than to uphold a maladministration of legal justice through an incompetent agent. Under that rule a justice of the peace should outrank a jurist who, being sworn to, would uphold the law though the heavens fell. If equity should be blended more with the administration of law, the sovereign people could so direct by statute, if it did not rise from judicial evolution.

It may be said that the country tends to socialism, and a jury would protect rights and remedy wrongs better than a court. But who does not know that if there is an undue tendency of that kind, it is more likely to manifest itself in a jury than a court?

It may be said that the court would better protect the rich and powerful than a poor man in a legal controversy, and hence juries are necessary. Are not the judges agents of the people, and is not every man armed with a ballot? When the rich few override the many poor, equal under the law and armed with the ballot, then a different question will be presented from that which arises from present conditions. Our very government and manhood suffrage

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would in this case be a failure, and the suppliant many could no more protect themselves in a jury-box than outside of it at the polls. There are sufficient leveling agencies in this country outside of the jury-box; and with manhood suffrage, communism is more to be apprehended than tyranny.

It may be said that calling in petit jurors has a tendency to educate the people as to law and justice by their experience in court. Then the courts ought to be popular schools; and the more litigations (which are strifes) we can have the better? No; such education is too expensive both in cash and justice, and such is not the object of courts of justice!

With the presumption that practical proper changes will be made in our judicial system (and this paper is written with that understanding) in case of the abolishment of jury trials, the argument is certainly in favor of their abrogation.

I am not prepared to say that a single judge is preferable to the present system of using a jury as well as a court. I believe I would decide in the negative on that proposition. But why cannot a system, by change of constitution and laws, be adopted that will give us not only a trained court, but also a trained, educated jury in the court? There would be no trouble, for instance, to arrange our judicial districts in the States, so that each one would consist of three parts, from each of which (part) a judge could be selected, and thus be procured a banc of three judges to sit together and try all questions of law and fact, civil and criminal.

The expenses for judges would not be appreciably more. The enormous expense for juries would be saved to the tax-payer and consequential expense to litigants. Causes would be tried much more easily and quickly, and there would in each part of the district be two judges, not selected by that constituency, to confer with and pass on the law and facts with the third. Would not the law be better administered? It would, if three heads are better than one. Would not the facts be more justly and intelligently decided? They most assuredly would, if qualification in the jury-box is to be commended.

I say, if alterations of our constitutions and laws were made, some such arrangements might be made in all the States, and thus whatever advantage there is in the jury be not only preserved but increased, and the enormous disadvantage of the present system be avoided.

The same observations may be made as to the Federal system of trial courts. A banc of judges either elected or appointed could do the work, and the petit jury, as now and for centuries constituted, could be dispensed with.

As to the grand jury I do not deal in this paper, for while there is not general use for it, and it is in fact being largely dispensed with in some of the States, still, I think, even if my ideal system of trials was adopted by an unlooked-for revolution, so to speak, in politics and law, it would be well to let the grand jury be called, as the courts or people through other functionaries demanded. Nor could objection be made to juries of experts in cases involving facts to pass on which special knowledge is necessary.

Of course, I do not predicate my theory on the assumption that it ought to

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be forced on an unwilling people, but base it on assumption that if the people were willing to adopt a better system, they would select the one outlined above, to save time, money, and secure a more just administration of law.

I have met, in course of commentaries on ordinary jury trials by lawyers about trial courts, such a diversity of views as to the real use and expediency of a petit jury as now constituted, that I have felt a little curiosity as to a discussion at our bar meeting; and hence to introduce the subject jotted down the foregoing reflections, aiming to state facts and conditions in the concrete though argumentatively, rather than to make an essay full of history and pedantic philosophy.

SHALL JURY TRIALS BE ABOLISHED IN THE UNITED STATES?

BY CHARLES B. GRAVES.

MR. PRESIDENT: In discussing the comparative merits of different tribunals for the trial of disputed questions of fact, it is well to bear in mind some of the considerations involved in an intelligent choice. And in this connection it may be suggested that no such tribunal can be obtained which will not be open to criticism and objections more or less serious, and that therefore the whole question is resolved into a mere choice between methods, none of which are wholly satisfactory.

In a popular form of government like ours, that institution or line of public policy is best which is the most satisfactory to the general public. And in my judgment, this is the supreme test by which every law and every public measure and method should be tried and determined. In theory, of course, this is presumed. We constantly assume that all our governmental machinery represents the expressed choice of the people. Practically, however, we know this to be a mistaken assumption. We know, as a practical fact, that much of the unrest and discontent occasionally shown by the people of our country is due to an intense and determined dissatisfaction with existing conditions. To reduce this feeling to the minimum, and to secure the greatest possible degree of popular contentment, and to produce the highest type of patriotism, our public methods must be such as will meet with the indorsement and approbation of the common citizen.

To preserve a proper and wholesome respect for our courts, it is important to have justice so administered therein as to make them in a reasonable degree above question or suspicion. Every defeated litigant ought to feel, when he leaves the court-room, that his rights have been fully and fairly considered; that under the rules and usages established for the trial of causes he has had a fair trial, and that the result, so disastrous to him, was not in the least due to partisan or corrupt influences of any kind.

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There was a time when the people regarded our courts with a degree of respect and admiration almost amounting to reverence. A judge was believed to be the embodiment of learning, dignity and official integrity; but now, after many "campaigns of education," every officer in the nation, from the President down to police judge, is suspected of being open to corrupt influences while in the discharge of his official duties; and this suspicion is not confined to an insignificant few, but it is possessed by a large number of the people of all parties. We all remember the derision with which the judgment of that historical tribunal, the Electoral Commission — which was composed of the very flower of American learning and official probity — was received throughout the country.

I know of an instance where a young lawyer, whose only evidence of legal knowledge was a freshly-written certificate of admission to the bar of a Kansas district court, uncorroborated by a single client or case, made appointments throughout the county where he resided, for the purpose of demonstrating to the people that the decision of the Supreme Court of the United States, in the Chicago anarchist cases, was in flagrant violation of the constitution, opposed to the most elementary principles of law, and a direct blow at the liberty of the common citizen. The fact that he was unable to state a single legal proposition involved in the decision was no hindrance to him, for wherever he went his speeches were applauded to such an extent as to indicate that his campaign was a "howling" success.

So long as such perambulating demagogues seek to create public dissension and to destroy the peace and tranquility of society, it is manifestly important to keep our courts removed as far as possible from the disturbing influence of their inflammatory harangues.

I do not believe that any tribunal of men having a fixed term of office can be created and maintained by the ordinary methods of election or appointment, which will give such continued satisfaction as has been given by the "apostolic twelve." Sooner or later, it would be believed by a few and suspected by many — whether justly or not is immaterial — that the decisions of such a tribunal were influenced by politics, corporations, the financial or social position of the parties, or some other equally reprehensible and potent consideration, which would soon weaken the public confidence in its integrity and lead to dissatisfaction, distrust, and in cases involving great public interest might lead to public disorder.

One of the principal objections urged against the present jury system is, that the ordinary juror is incapable of reaching a verdict by intelligent methods; that our verdicts as now found represent the mere impressions or intuitions of the jury as to what is right and just under the evidence produced, and are not the result of a continuous and connected line of reasoning, (as it is assumed they ought to be,) and therefore it is claimed that men learned, skilled and experienced in the trial of causes would give better and more satisfactory results. As a mere theory this may seem plausible, but I do not think experience will justify the claim. As a rule, verdicts in cases that are clearly and

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intelligently presented to a jury meet with general approbation — and it is results, and not methods, that is sought for in trials.

It is said that in jury trials attorneys constantly put in a lower grade of evidence than they would if the trial was before a judge, which often misleads the minds of the jury, besides consuming a large amount of valuable time. This objection, if true, is not fairly chargeable to the jury. The jury, on the contrary, is the innocent victim of this practice, and not the cause of it. If a reform is needed in this respect, it ought to be made on the "other side" of the court. I am aware that jury trials are too often loaded down with remote and unreliable rubbish which no intelligent mind would consider for a moment. This practice is the result, I suppose, of the old but erroneous idea that the ordinary juror is a stupid, emotional animal, having neither intelligence nor reason. At some time in the past this may have been true, but to-day we are bound to admit, and are proud of the opportunity to make the admission, that the ordinary citizen who does jury duty is both intelligent and honest, and can be relied upon to as conscientiously do his duty as any other class of men.

There are a great many theories being pressed upon the attention of a "long-suffering" people that have a pleasant sound when announced from the platform, look fairly well on paper, and when superficially examined are not deficient in plausibility, the promoters of which seem to wholly ignore the important consideration that a theory which involves a part of our government, to be successful, must be accepted and carried out in good faith by a "stiff-necked and rebellious people." I am almost persuaded that this proposed innovation upon the jury system is a theory that will not be so accepted and carried out.

To the end that we may more fully understand how this new system is expected to work when in practical operation, I here submit the following inquiries to whoever shall follow as its champion:

Where are the gentlemen having these ideal qualifications of wisdom, skill, experience and integrity, required of those who are to take the place of our juries, to be found? When found, how will they be placed in these offices — by appointment, or election? Will they be Populists, Democrats, Republicans, or Prohibitionists? Will they be publicly accused, as the judges of courts now are, of deciding cases to advance the interests of the political party to which they belong, and to protect great corporations, in return for courtesies extended and other valuable considerations received? If appointed, will it be by the governor, the central committee, or the executive council, or all combined? In either case, will the governor have the right of removal at will? If elected, what assurance have we that they will possess any of the ideal qualities aforesaid?

The men now holding judicial positions in this State are charged with the duty of determining the disputed facts involved in many of the cases tried before them, and it is fair to assume that they were elected to these positions because they were supposed to possess all these eminent qualities. These men, taken as a whole, may be said to represent the perfect fruit of the elective sys-

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tem, and while the great majority of them are able, learned, and in every way all that could be desired, still some of them do not quite come up to the ideal standard. On the contrary, it often occurs in trials of fact to the court, that the bar is as much surprised at the court's findings of fact as it ever is at the verdict of a jury.

The extensive use now made of the jury in our courts, where, by the mere waiver of it, the facts could be submitted to one of these learned, skilled and experienced judges, is some evidence to my mind that the old-fashioned jury is still a favored institution.

The present jury system, while not all that could be desired, meets the requirements of our civilization better than any substitute yet suggested. The jurors come from all parts of the county. They are practically strangers to each other and to the litigants. They are selected on account of their intelligence, integrity, and general good character and standing in the neighborhood where they reside and are best known. When the case under consideration is ended, that particular jury is dissolved, practically forever, as the same jury rarely sits in more than one case. They are summoned to the performance of an onerous public duty which cannot be imposed upon them for a longer period than during one term of court in a year. Many old-fashioned people think that there is a wide margin of difference between the performance of such a duty and in exercising the functions of an honorable, dignified and lucrative office which has been sought and secured after great loss of time, some financial sacrifice, and the endurance of the humiliations usually incident to political campaigns, and that this difference makes the former less vulnerable to suspicion than the latter.

Jurors, as now selected, are as far removed from objectionable influences of every kind as any human tribunal can be. No possible personal interests in the result of the suit can be fairly imputed to them.

Every defeated litigant, after considering the impartial manner in which the jury was originally selected, his opportunity for examination and challenge for cause, and his privilege of peremptory challenge, is bound to feel that he has had a fair trial upon the facts of his case. His mouth is absolutely closed against every reasonable ground of complaint. If, after all this care to have justice done, there is for any reason a failure, there sits the judge, who represents all the wisdom, justice, learning and skill that could be desired, with full power to interpose and save the endangered rights of the litigant. There is an element of fairness in such a trial that commends it to the favorable consideration of every fair-minded person.

But it is said that the general public cannot afford to maintain such expensive courts simply to gratify the fancy of a few litigants. This is to my mind, a very narrow objection; for every man, woman and child in the country may be a litigant, and whether an actual litigant or not, they are all interested in the character of our courts, as no person can feel secure in either person or property unless he has an abiding confidence that, in case of necessity, his nearest and dearest interests will be adequately maintained and protected by the adjudications of these tribunals. And unless this confidence is

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preserved to the fullest degree, our courts will fall short of one of the important objects of their creation.

Some of the objections urged against the jury system are not well taken—they belong elsewhere. Many, perhaps a majority, of the mistrials and miscarriages of justice so often charged to the jury, are due as much to the mismanagement of the trial judge and attorneys as to the want of intelligence on the part of the jury. Imagine, if you can—and many Kansas lawyers can—a very ordinary and inexperienced lawyer or a farmer on the bench of a trial court. Then suppose a case to come on for trial before that court and a jury, which involves a few complicated questions of fact and some legal questions with which such a court may fairly be expected to be unfamiliar. Now, assume that the attorneys in charge of the case have not been able to familiarize themselves with its details. In ordinary practice, these conditions are not common, but they occur too frequently to be called rare; and when they do exist, what in the name of intelligent justice is it reasonable to expect? In their statement of the case, counsel are from necessity too general to be of any assistance to either court or jury, and in its trial to the jury, counsel, in their zeal to protect all the rights of their clients, those perceived as well as those suspected, fill the record with every conceivable objection, which the court helplessly overrules until the case has developed sufficiently to be recognized. When the evidence is closed, the jury receive as instructions either a few general legal propositions which might apply to almost any case, or an elaborate, unintelligible legal dissertation—depending upon the personal peculiarities of the presiding judge—which leaves the jury wholly at sea, "without rudder, compass, or sail," after which counsel in their arguments make prominent many things not mentioned in the instructions; and then, when the jury bring in a verdict which fails to show a clearer conception of the case than was possessed by either court or counsel, some gentleman rises in his place and gravely remarks that a jury trial is a farce anyhow, and the whole system ought to be abolished.

An eminent trial judge once told me by way of friendly advice, that when a doubtful question of law arose before him in the trial of a case, and the hour was such that he could not adjourn to consider it, he encouraged the argument of counsel; "and," said he, "while they talk, I think. Often I do not hear what they say, but when I have reached a satisfactory conclusion in my own mind, I stop further argument, decide, and proceed with the trial."

The judicial reform needed in this country more than any other, and one which would go far toward removing some of the objections now made to the jury system, is not the destruction of this system, but more broad-gauged men of good legal knowledge, fair experience, and manly independence on the bench, and such further restrictions upon admission to the bar as will tend to elevate the legal profession and to protect it from the disgrace and odium now being constantly cast upon it by the incompetency and dishonesty of the mountebanks and pettifoggers who gain admission to its ranks.

It has been said that the reason once existing for the present jury system has disappeared, and therefore the system ought to follow the reason. The

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reason given is, that the jury was originally intended as a protection to the common citizen from the tyranny of the sovereign and the rapacity of royal dignitaries. Assuming this to be the true reason, I think the idea is better expressed by the statement that the jury was intended to protect the weak from the unjust and oppressive aggressions of the strong. For this reason, the jury has always been a necessity, is a necessity now, and in the very nature of mankind it must forever remain a necessity. We cannot conceive of a condition of organized society in which there will not be those who need protection.

To-day, as much as ever before since the dawn of history, the common citizen needs some tribunal upon which he can rely with confidence, to protect him from the encroachments of power. Whether that power appears in the form of a tyrannical sovereign, or other officer; in combinations of men for any purpose; in concentrated wealth; from high social position, political influence, or otherwise, is immaterial. Such a tribunal is found in the American jury, "the palladium of our civil rights." It is composed of men who live upon the same plane in life as the ordinary citizen, and who, as much as any trained or skilled men likely to be chosen under any other system, understand human nature, and when intelligently assisted by court and counsel, can be relied upon to reach conclusions that will satisfy the requirements of justice and receive the approval of the common conscience.

Finally, Mr. President, the jury system is accused of being old. And it is old, but its age is honorable. It has grown gray while protecting the poor and weak from the cruel exactions and extortionate demands of the rich and powerful. It comes to us with the record of centuries, but every page of that record is illuminated by the splendor of its magnificent achievements in behalf of human rights. It brings to us the grateful benedictions of our ancestors, to whom it was a bulwark of protection and a refuge of safety in times of trial and great peril. It comes to us crowned not only with the glories of the remote past, but also as the preserver of all the rights and liberties which we as common citizens now enjoy. And, if we would continue in the possession of these beneficent privileges, we must guard and perpetuate this ancient, it may be, but still vigorous and potent instrumentality by which they have been upheld and preserved.

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Constitution and By-Laws.

CONSTITUTION.

ARTICLE 1. The name of the Association shall be The Bar Association of the State of Kansas.

ART. 2. The object of the Association shall be the elevation of the standard of professional learning and integrity, so as to inspire the greatest degree of respect for the efforts and influence of the bar in the administration of justice, and also to cultivate fraternal relations among its members.

ART. 3. The officers of the Association shall be a President, Vice-President, Secretary, Treasurer, and an Executive Council of five members.

ART. 4. The President shall preside at all meetings of the Association, and shall open each annual meeting of the Association with an appropriate address. The Vice-President shall preside in the absence of the President; and in the absence of both, a president *pro tem.* may be elected by the meeting. The Secretary shall keep a record of all the proceedings of the Association, and conduct the correspondence of the Association.

ART. 5. The Treasurer shall keep an account of all funds of the Association. The Executive Council shall manage the affairs of the Association, subject to the constitution and by-laws.

ART. 6. A quorum for the transaction of business shall be twenty members.

ART. 7. No person shall be admitted to membership of this Association who is not a member of the bar of the Supreme Court, and who has not been engaged in the regular practice of the law for one year next preceding his application for admission.

ART. 8. All applications for membership shall be referred to the Executive Council, who shall report the same to the Association, with their recommendation thereon; and no person shall be admitted to membership except by a two-thirds vote of the members present. Each member shall pay an admission fee of five dollars, and annual dues of three dollars.

ART. 9. The annual meetings of the Association shall be held in January of each year, at the capital, at such time as the Executive Council fix. Thirty days' notice of the annual meeting shall be given by the Secretary. Special meetings may be called by the Executive Council, of which meetings thirty days' notice shall be given to the members by the Secretary.

BY-LAWS.

SECTION 1. The Executive Council shall, on or before the first day of May of each year, designate such number of members, not exceeding six, to prepare

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and deliver or read at the next annual meeting thereafter appropriate addresses or papers upon subjects chosen and assigned by the Council to each of said members, as may be so selected for such purpose.

SEC. 2. The order of exercises at each annual meeting shall be as follows:

1. Opening address by the President.
2. Consideration of applications for membership.
3. Reports of Secretary and Treasurer.
4. Report of Executive Council.
5. Reports of standing committees.
6. Reports of special committees.
7. Delivering and reading of addresses and papers.
8. Miscellaneous business.
9. Election of officers and delegates to American Bar Association.

SEC. 3. There shall be chosen by ballot, at each annual meeting, three members as delegates to American Bar Association for the ensuing year.

SEC. 4. All addresses delivered and papers read before the Association, the copy of which is furnished by the author, shall be lodged with the Secretary. The annual address of the President, the reports of committees, and all proceedings of the annual meeting, shall be printed; but no other address delivered or paper read shall be printed, except by order of the Executive Council.

SEC. 5. The terms of office of all officers elected at any annual meeting shall begin at the adjournment of such annual meeting, and end at the adjournment of the next annual meeting. And in case of any vacancy, the Executive Council shall appoint some member to fill the vacancy, who shall hold until his successor is elected.

SEC. 6. The Treasurer's accounts and report shall be examined annually by the Executive Council before their presentation to the Association, and the Executive Council shall report the result of such examination of the Treasurer's report and accounts to the Association at its annual meeting.

SEC. 7. The Executive Council shall cause to be printed such number of copies of the constitution and by-laws of this Association, with a roll of the members of the Association, as it shall deem best, not exceeding one thousand copies, and shall distribute the same to members of the Association, and to such other persons, or associations, or societies, as they may deem prudent; and shall, with the proceedings of each annual meeting, print a roll of the members of the Association.

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Roll of Members.

NAME.	ADDRESS.	ADMITTED.
Abbott, A. J.	Garden City	Jan. 8, 1890
Ady, J. W.	Newton	June 4, 1884
Alden, H. L.	Kansas City, Kas.	Jan. 13, 1885
Alford, D. S.	Lawrence	June 6, 1883
Allen, S. H.	Pleasanton	Jan. 24, 1894
Allensworth, J. T.	Atchison	June 6, 1883
Anderson, T. P.	Kansas City, Kas.	Jan. 8, 1889
Angevine, C.	Mankato	June 6, 1883
Austin, Edwin A.	Topeka	Jan. 13, 1886
Austin, James H.	Kansas City, Mo.	Jan. 9, 1883
Baker, Sperry	Paola	June 6, 1883
Benson, A. W.	Ottawa	Jan. 9, 1883
Benton, C. E.	Fort Scott	Jan. 8, 1890
Bergen, A.	Topeka	Jan. 11, 1887
Berger, A. L.	Kansas City, Kas.	Jan. 24, 1894
Bertram, E. S.	Council Grove	Jan. 11, 1887
Bertram, G. W.	Oberlin	Jan. 13, 1885
Bird, W. A. S.	Topeka	June 6, 1883
Bishop, W. H.	Salina	Jan. 24, 1894
Bland, W. T.	Atchison	Jan. 25, 1892
Blue, R. W.	Pleasanton	June 6, 1883
Bond, T. L.	Salina	Jan. 13, 1886
Bowman, C. S.	Newton	Jan. 8, 1890
Bradford, S. B.	Topeka	Jan. 3, 1888
Brewer, David J.	Washington, D. C.	Jan. 9, 1883
Brock, Robert	Manhattan	Jan. 24, 1894
Broderick, Case	Holton	Jan. 9, 1883
Brown, Milton	Garden City	Jan. 8, 1890
Bryant, A. J.	Hays City	Jan. 24, 1894
Buchan, W. J.	Kansas City, Kas.	Jan. 9, 1883
Bucher, Charles	Newton	June 4, 1884
Buck, J. Jay	Emporia	Jan. 11, 1887
Call, Henry L.	Topeka	Jan. 8, 1889
Campbell, A. B.	Topeka	Jan. 12, 1887
Campbell, W. C.	Topeka	June 6, 1883
Campbell, W. P.	Wichita	Jan. 9, 1883
Case, George H.	Mankato	Jan. 9, 1883
Chandler, George	Washington, D. C.	Jan. 9, 1883
Clark, Geo. W.	Lyons	Jan. 24, 1894
Clarke, Fabius M.	New York City	June 6, 1883
Clarke, W. B.	Kansas City, Mo.	Jan. 13, 1885
Clogston, J. B.	Eureka	Jan. 13, 1885
Cornell, George G.	Alma	Jan. 4, 1888
Crozier, Robert	Leavenworth	Jan. 9, 1883
Cunningham, E. W.	Emporia	Jan. 8, 1890
Coleman, C. C.	Clay Center	Jan. 31, 1893

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ROLL OF MEMBERS—CONTINUED.

NAME.	ADDRESS.	ADMITTED.
Dassler, C. F. W.	Leavenworth	Jan. 8, 1889
Davis, J. W.	Greensburg	Jan. 24, 1894
Day, John W	Topeka	June 6, 1883
Devenney, A. S.	Olathe	June 6, 1883
Doster, Frank	Marion	Jan. 9, 1883
Douglass, G. L.	Wichita	Jan. 8, 1890
Douthitt, Wm. P.	Topeka	Jan. 13, 1885
Earle, Lucien	McPherson	Jan. 8, 1889
Eaton, Robert M.	Atchison	Jan. 8, 1889
Egan, J. G	Chicago, Ill.	Jan. 25, 1892
Ellis, A. H	Beloit	Jan. 8, 1889
Emery, R. M	Seneca	Jan. 8, 1889
Everest, A. S.	Atchison	Jan. 9, 1883
Falloon, James	Hiawatha	June 6, 1883
Fenlon, Thomas P	Leavenworth	Jan. 9, 1883
Ferry, L. S.	Topeka	Jan. 25, 1892
Foster, C. G.	Topeka	June 6, 1883
Foster, F. H.	Topeka	Jan. 11, 1887
Freeman, W. H. H.	Kansas City, Kas	Nov. 28, 1883
Freeman, Winfield	Kansas City, Kas	Jan. 25, 1892
Frith, J. Harvey	Emporia	Jan. 8, 1889
Garver, T. F	Salina	June 6, 1883
Getty, George	Syracuse	Jan. 8, 1890
Gillett, F. E.	Kingman	Jan. 13, 1885
Gillpatrick, J. H.	Leavenworth	Jan. 9, 1883
Glasse, W. B	Oswego	Jan. 9, 1883
Gleason, H. W.	Hutchinson	Jan. 20, 1891
Gleed, C. S.	Topeka	Jan. 13, 1886
Gleed, J. W.	Topeka	Jan. 8, 1889
Godard, A. A.	Topeka	Jan. 8, 1890
Graves, Charles B.	Emporia	Jan. 9, 1883
Green, Geo. S.	Guthrie, Oklahoma	Jan. 11, 1887
Green, H. T.*	Leavenworth	June 6, 1883
Green, J. W.	Lawrence	Jan. 9, 1883
Griffin, Chas. T.*	Atchison	June 6, 1883
Grattan, G. F.	McPherson	Jan. 25, 1892
Guthrie, John	Topeka	June 6, 1883
Guthrie, W. W	Atchison	Feb. 3, 1885
Guthrie, W. F.	Atchison	Jan. 25, 1892
Hadley, D. B	Kansas City, Kas	Jan. 8, 1889
Hagerman, James	St. Louis, Mo.	Jan. 13, 1886
Hallowell, J. R.	Wichita	June 6, 1883
Hamble, C. B.*	Holton	Jan. 24, 1894
Hamilton, A. L. L.	El Dorado	Jan. 8, 1890
Harkness, F. P	Clay Center	Jan. 8, 1889
Harris, Amos*	Wichita	Jan. 9, 1883
Harris, Vernon H.	Lawrence	Jan. 4, 1888
Harrison, T. W	Topeka	Jan. 3, 1888

*Deceased.

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ROLL OF MEMBERS—CONTINUED.

NAME.	ADDRESS.	ADMITTED.
Haun, T. S.	Jetmore	Jan. 8, 1889
Hayden, Charles	Holton	June 6, 1883
Hayden, Sydney	Holton	June 6, 1883
Hayward, F. M.	Kansas City, Mo.	Jan. 13, 1886
Hessin, John E.	Manhattan	Jan. 8, 1890
Hick, R. S.	Westmoreland	Jan. 13, 1885
Hobbs, Bruno	Kansas City, Kas.	Jan. 24, 1894
Hogan, E. G.	Ravanna	Jan. 20, 1891
Holt, Joel *	Beloit	Jan. 3, 1888
Hopkins, Scott	Horton	Jan. 3, 1888
Horton, Albert H.	Topeka	Jan. 9, 1883
Houk, L.	Hutchinson	Jan. 9, 1883
Hudson, T. J.	Fredonia	June 6, 1883
Humphrey, H. J. *	Hutchinson	Jan. 12, 1887
Humphrey, James	Junction City	Jan. 9, 1883
Hurd, T. A.	Leavenworth	June 6, 1883
Huron, G. A.	Topeka	Jan. 8, 1890
Hutchings, C. F.	Kansas City, Kas.	June 6, 1883
Hutchinson, E.	Marysville	Jan. 4, 1888
Ingalls, Ralph	Topeka	Jan. 24, 1894
Jetmore, A. B.	Topeka	Jan. 11, 1887
Jewett, E. B.	Wichita	Jan. 8, 1889
Johns, H. C. *	Hutchinson	Jan. 8, 1890
Johnson, J. B.	Topeka	June 6, 1883
Johnson, W. A.	Garnett	June 6, 1883
Johnson, J. G.	Garnett	Feb. 3, 1885
Johnston, W. A.	Minneapolis	June 6, 1883
Johnston, W. T.	Paola	Jan. 13, 1886
Jones, Howel	Topeka	Jan. 8, 1890
Keeler, Henry	Topeka	Jan. 8, 1890
Kellogg, L. B.	Emporia	Jan. 13, 1885
Kellogg, Mrs. J. M.	Emporia	Jan. 8, 1889
Kelso, David	Atchison	Jan. 13, 1885
Kimball, C. H.	Parsons	Jan. 11, 1887
Kimble, Sam	Manhattan	Jan. 25, 1892
Kingman, Samuel A.	Topeka	Jan. 13, 1886
Larimer, J. B.	Topeka	Jan. 8, 1890
Lawrence, S. S.	Guthrie, O. T.	Jan. 13, 1886
Leland, Cyrus A.	El Dorado	Jan. 9, 1883
Lewis, C. C.	Phillipsburg	Jan. 13, 1885
Lewis, Ellis	Osage City	Jan. 9, 1883
Little, E. C.	Abilene	Jan. 8, 1890
Little, G. F.	Junction City	Jan. 8, 1890
Littlefield, W.	Topeka	Jan. 13, 1885
Lloyd, Ira E.	Ellsworth	Jan. 13, 1885
Loomis, N. H.	Topeka	Jan. 25, 1892
Lovitt, R. A.	Salina	Jan. 13, 1886

* Deceased.

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ROLL OF MEMBERS — CONTINUED.

NAME.	ADDRESS.	ADMITTED.
Madden, Dennis	Cottonwood Falls	Jan. 8, 1890
Mahan, John H.	Abilene	Nov. 28, 1883
Maltby, J. C.*	Minneapolis	Jan. 11, 1887
Martin, David	Atchison	Jan. 9, 1883
Martin, F. L.	Hutchinson	Jan. 31, 1893
Martin, John	Topeka	Jan. 9, 1883
Mason, Rankin	Topeka	Jan. 8, 1890
May, A. R.	Washington	June 6, 1883
McBride, W. H.	Osborne	Jan. 25, 1892
McCammon, G. W.	Valley Falls	Jan. 8, 1889
McCleverty, J. D.	Fort Scott	Jan. 9, 1883
McClure, J. R.	Junction City	June 6, 1883
McFarland, E. A.	Lincoln	Jan. 8, 1890
McFarland, J. D.	Topeka	June 6, 1883
McLean, H. A.	Marion	Jan. 12, 1887
McMath, E. A.	Topeka	Jan. 24, 1894
McMullen, J. F.	Winfield	Jan. 8, 1890
Mead, C. F.	Abilene	Jan. 31, 1893
Miller, O. L.	Kansas City, Kas.	Jan. 8, 1889
Milliken, J. D.	McPherson	Jan. 11, 1887
Mills, F. D.	Kansas City, Kas.	Jan. 13, 1886
Monroe, Charles	Los Angeles	June 6, 1883
Moore, H. Miles	Leavenworth	June 6, 1883
Moore, Edwin White	Chicago, Ill.	Jan. 25, 1892
Moore, McCabe	Kansas City, Kas.	Jan. 24, 1894
Morris, W. H.	Girard	Jan. 24, 1894
Mulvane, David W.	Topeka	Jan. 24, 1894
Nicholson, M. B.	Council Grove	Feb. 3, 1885
Osborn, S. J.	Wakeeney	Jan. 8, 1890
Overmyer, David	Topeka	Jan. 8, 1889
Patchin, A. L.	Stockton	Jan. 9, 1883
Patterson, W. J.	Lawrence	Jan. 13, 1886
Peck, George R.	Topeka	Jan. 9, 1883
Peckham, Chas. J.	Winfield	Jan. 11, 1887
Perkins, L. H.	Lawrence	Jan. 24, 1894
Perry, W. C.	Fort Scott	June 6, 1883
Pickler, R. M.	Smith Center	Jan. 24, 1894
Porter, Silas W.	Kansas City, Kas.	Jan. 3, 1888
Powell, Omar	New York City	Jan. 3, 1888
Prescott, J. H.*	Salina	Jan. 9, 1883
Price, Francis C.	Ashland	Jan. 25, 1892
Pringle, J. T.	Burlingame	Jan. 24, 1894
Quinton, A. B.	Topeka	Jan. 4, 1888
Quinton, E. S.	Topeka	Jan. 4, 1888
Radcliff, H. J.	Cottonwood Falls	Jan. 8, 1890
Randolph, A. M. F.	Burlington	Jan. 25, 1892
Redd, George S.	Denver, Colo.	Jan. 8, 1889

*Deceased.

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ROLL OF MEMBERS—CONTINUED.

NAME.	ADDRESS.	ADMITTED.
Redden, A. L.	El Dorado.	Jan. 13, 1885
Reed, Isaac G.	Wellington.	Feb. 3, 1885
Rees, James M.	Kansas City, Kas.	Jan. 24, 1894
Riggs, S. A.	Lawrence.	Jan. 13, 1886
Rightmire, W. F.	Topeka.	Jan. 8, 1890
Roark, Wm. S.	Sharon Springs.	Jan. 25, 1892
Roberts, John W.	Hutchinson.	Jan. 25, 1892
Robinson, E. F.	Osborne.	Jan. 8, 1890
Robinson, R. G.	Holton.	Jan. 11, 1887
Rossington, W. H.	Topeka.	Jan. 9, 1883
Root, H. C.	Topeka.	Jan. 8, 1889
Scott, Henry W.	Guthrie, O. T.	Jan. 8, 1889
Scott, W. W.*	Emporia.	Jan. 9, 1883
Seabrook, S. L.	Topeka.	Jan. 13, 1886
Sedgwick, T. N.	Emporia.	Jan. 8, 1889
Seaver, B. A.	Troy.	June 6, 1883
Shafer, J. D.	Leavenworth.	June 6, 1883
Shartel, John W.	Guthrie, O. T.	Jan. 25, 1892
Sheridan, John C.	Paola.	Jan. 13, 1886
Simpson, B. F.	Paola.	June 6, 1883
Sluss, H. C.	Wichita.	Jan. 9, 1883
Smith, C. B.	Topeka.	June 6, 1883
Smith, Charles W.	Stockton.	Jan. 13, 1885
Smith, Clark A.	Cawker City.	Jan. 9, 1883
Smith, Wm. R.	Kansas City, Kas.	Jan. 13, 1886
Smith, W. W.	Topeka.	Jan. 13, 1885
Snoddy, J. D.	Pleasanton.	Jan. 9, 1883
Solomon, H. C.	Atchison.	Jan. 24, 1894
Spencer, Chas. F.	Topeka.	Jan. 4, 1888
Spencer, James M.	Topeka.	Feb. 3, 1885
Spilman, R. B.	Manhattan.	Jan. 24, 1894
Stackpole, Henry W.	Clay Center.	Jan. 20, 1891
Stambaugh, W. S.	Abilene.	Jan. 20, 1891
Stephens, N. T.*	Lawrence.	Jan. 9, 1883
Stevens, Hiram.	Paola.	Jan. 13, 1886
Stillwell, L.	Erie.	June 6, 1883
Strang, J. C.	Guthrie, O. T.	Jan. 9, 1883
Sturgis, F. W.	Concordia.	Jan. 9, 1883
Summerfield, M.	Lawrence.	Jan. 4, 1888
Sutherland, J. W.	Neodesha.	June 6, 1883
Taylor, Irwin.	Chicago, Ill.	Jan. 13, 1886
Thacher, S. O.	Lawrence.	Jan. 9, 1883
Thompson, J. F.	Sabetha.	Jan. 25, 1892
Thompson, L. H.	Norton.	Jan. 8, 1890
Thompson, R. F.	Minneapolis.	Jan. 25, 1892
Thomson, William.	Burlingame.	Jan. 24, 1894
Tillotson, D. C.	Topeka.	Jan. 8, 1889
Tomlinson, J. C.	Atchison.	Jan. 13, 1886
Troutman, J. A.	Topeka.	Jan. 12, 1887
Valentine, D. M.	Topeka.	Jan. 9, 1883

*Deceased.

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ROLL OF MEMBERS—CONCLUDED.

NAME.	ADDRESS.	ADMITTED.
Vandeveer, G. A.	Kansas City, Mo.	Jan. 8, 1890
Vandivert, S. W.	Kinsley	Jan. 25, 1892
Waggener, B. P.	Atchison	June 6, 1883
Wagstaff, W. R.*	Paola	Jan. 9, 1883
Wall, T. B.	Wichita	Jan. 8, 1890
Walrond, Z. T.	Muscogee, I. T.	Jan. 11, 1887
Ware, E. F.	Topeka	June 6, 1883
Waterbury, Ed. S.	Emporia	Jan. 13, 1885
Webb, L. J.*	Topeka	Jan. 4, 1888
Webb, W. C.	Topeka	Jan. 9, 1883
Webb, W. D.	Atchison	Jan. 13, 1885
Webster, Chas. W.	McPherson	Jan. 25, 1892
Welch, R. B.	Topeka	Jan. 8, 1890
Wells, Abijah	Seneca	Jan. 8, 1889
Wheat, L. B.	Leavenworth	June 6, 1883
White, J. M.	Howard	June 6, 1883
White, T. J.	Kansas City, Kas.	Jan. 20, 1891
Whiteside, H.	Hutchinson	Jan. 20, 1891
Wilcockson, K. E.	Oakley	Jan. 8, 1890
Wilder, George C.	Manhattan	June 6, 1883
Williams, A. L.	Topeka	Jan. 31, 1893
Williams, F. L.	Clay Center	Jan. 31, 1893
Winslow, C. S.	Marion	Jan. 20, 1891
Wolfe, Eugene	Topeka	Jan. 25, 1892
Wood, O. J.	Topeka	Jan. 25, 1892

*Deceased.

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Twelfth Annual Meeting

OF THE

BAR ASSOCIATION

OF THE

State of Kansas.

Held in the City of Topeka, January 16 and 17, 1895.

CRANE & CO., TOPEKA.

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TWELFTH ANNUAL MEETING

OF THE

BAR ASSOCIATION

OF THE

STATE OF KANSAS.

Held in the City of Topeka, January 16 and 17, 1895.

TOPEKA, KANSAS:
CRANE & COMPANY, PRINTERS.
1895.

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Officers for the Year 1895.

PRESIDENT, ... H. L. ALDEN.
VICE-PRESIDENT, ... J. B. LARIMER.
SECRETARY, ... C. J. BROWN.
TREASURER, ... HOWEL JONES.

Executive Council.

SAM KIMBLE, CHAIRMAN.

T. B. WALL, A. A. GODARD,
E. A. McFARLAND, J. D. McCLEVERTY.

Delegates to American Bar Association.

JOHN E. HESSIN, R. F. THOMPSON, JOHN W. ROBERTS.

Delegates to National Bar Association.

A. L. L. HAMILTON, F. D. MILLS, W. J. PATTERSON.

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Officers of Previous Years.

Officers for the Years 1883-4.

President..... ALBERT H. HORTON. | *Secretary* ..... W. H. ROSSINGTON.
Vice-President. N. T. STEPHENS. | *Treasurer*..... D. M. VALENTINE.

Executive Council.

D. M. VALENTINE, *Chairman*, JAMES HUMPHREY, DAVID MARTIN,
J. H. GILLPATRICK, FRANK DOSTER.

Officers for the Year 1885.

President..... ALBERT H. HORTON. | *Secretary*..... W. H. ROSSINGTON.
Vice-President. W. A. JOHNSTON. | *Treasurer*..... D. M. VALENTINE.

Executive Council.

D. M. VALENTINE, *Chairman*, JAMES HUMPHREY, DAVID MARTIN,
E. S. TORRANCE, L. HOUK.

Delegates to American Bar Association.

A. S. EVEREST, A. L. REDDEN, JAMES HUMPHREY.

Officers for the Year 1886.

President..... ALBERT H. HORTON. | *Secretary*..... JOHN W. DAY.
Vice-President. E. S. TORRANCE. | *Treasurer*..... D. M. VALENTINE.

Executive Council.

W. A. JOHNSTON, *Chairman*, JOHN GUTHRIE, A. W. BENSON,
M. B. NICHOLSON, JOHN H. MAHAN.

Delegates to American Bar Association.

DAVID J. BREWER, W. H. ROSSINGTON, FRED. D. MILLS.

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Officers for the Year 1887.

President..... SOLON O. THACHER. | *Secretary*..... JOHN W. DAY.
Vice-President. HENRY C. SLUSS. | *Treasurer*..... D. M. VALENTINE.

Executive Council.

W. A. JOHNSTON, *Chairman*, C. B. GRAVES, ROBERT CROZIER,
GEORGE S. GREEN, T. F. GARVER.

Delegates to American Bar Association.

W. W. GUTHRIE, A. L. REDDEN, T. A. HURD.

Officers for the Year 1888.

President.....W. A. JOHNSTON. | *Secretary*.....JOHN W. DAY.
Vice-President. EUGENE F. WARE. | *Treasurer*.....D. M. VALENTINE.

Executive Council.

JOHN GUTHRIE, *Chairman*, S. B. BRADFORD, GEORGE J. BARKER,
J. W. ADY, J. H. MAHAN.

Delegates to American Bar Association.

SOLON O. THACHER, ALBERT H. HORTON, HENRY C. SLUSS.

Officers for the Year 1889.

President .....JOHN GUTHRIE. | *Secretary*..... CHAS. S. GLEED.
Vice-President.....T. F. GARVER. | *Treasurer* ..... D. M. VALENTINE.

Executive Council.

B. F. SIMPSON, *Chairman*, W. W. SCOTT, L. B. KELLOGG,
A. W. BENSON, CHAS. S. HAYDEN.

Delegates to American Bar Association.

J. W. GREEN, J. H. GILLPATRICK, CHARLES MONROE.

Delegates to National Bar Association.

ROBERT CROZIER, M. B. NICHOLSON, ROBERT M. EATON,
GEO. S. GREEN, H. L. ALDEN, J. W. ADY.

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Officers for the Year 1890.

President..... ROBERT CROZIER. | *Secretary*..... C. J. BROWN.
Vice-President...CHAS. B. GRAVES. | *Treasurer*.....HOWEL JONES.

Executive Council.

B. F. SIMPSON, *Chairman*, JOHN GUTHRIE, CASE BRODERICK,
W. W. SCOTT, R. M. EATON.

Delegates to American Bar Association.

GEORGE S. GREEN, L. B. KELLOGG, W. C. PERRY.

Delegates to National Bar Association.

W. A. JOHNSTON, B. P. WAGGENER, A. H. ELLIS,
J. W. GLEED, G. F. LITTLE, J. F. MCMULLEN.

Officers for the Year 1891.

President..... D. M. VALENTINE. | *Secretary* ..... C. J. BROWN.
Vice-President.. L. HOUK. | *Treasurer*.....HOWEL JONES.

Executive Council.

T. F. GARVER, *Chairman*, E. W. CUNNINGHAM, M. B. NICHOLSON,
J. R. MCCLURE, W. P. DOUTHITT.

Delegates to American Bar Association.

T. F. GARVER, B. P. WAGGENER, J. H. GILLPATRICK.

Delegates to National Bar Association.

W. A. JOHNSTON, A. H. ELLIS, G. F. LITTLE,
ROBERT CROZIER, J. W. GLEED, J. F. MCMULLEN.

Officers for the Year 1892.

President .....T. F. GARVER. | *Secretary* ... .C. J. BROWN.
Vice-President .....J. W. GREEN. | *Treasurer*.....HOWEL JONES.

Executive Council.

W. C. WEBB, *Chairman*, C. ANGEVINE, E. W. MOORE,
WINFIELD FREEMAN, A. A. HARRIS.

Delegates to American Bar Association.

JAMES HUMPHREY, F. P. HARKNESS, J. D. MILLIKEN.

Delegates to National Bar Association.

T. N. SEDGWICK, DAVID OVERMYER, S. W. VANDIVERT.

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Officers for the Year 1893.

President .....JAMES HUMPHREY. | *Secretary* .....C. J. BROWN.
Vice-President ..H. L. ALDEN. | *Treasurer*.....HOWEL JONES.

Executive Council.

J. D. MILLIKEN, *Chairman*, N. H. LOOMIS, A. H. ELLIS,
SAM KIMBLE, H. W. GLEASON.

Delegates to American Bar Association.

A. L. WILLIAMS, M. B. NICHOLSON, A. J. ABBOTT.

Alternates.

F. L. WILLIAMS, T. A. HURD, C. B. GRAVES.

Delegates to National Bar Association.

R. M. EATON, W. A. S. BIRD, C. W. SMITH.

Officers for the Year 1894.

President .....J. D. MILLIKEN. | *Secretary*.....C. J. BROWN.
Vice-President.....F. L. MARTIN. | *Treasurer*.....HOWEL JONES.

Executive Council.

H. L. ALDEN, *Chairman*, SAM. KIMBLE, J. W. GREEN,
T. L. BOND, E. W. MOORE.

Delegates to American Bar Association.

T. J. WHITE, R. B. WELCH, H. WHITESIDE.

Delegates to National Bar Association.

F. P. HARKNESS, W. C. PERRY, W. H. ROSSINGTON.

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Minutes of the Twelfth Annual Meeting.

TOPEKA, KANSAS, January 16, 1895.

The twelfth annual meeting of the Bar Association of the State of Kansas was called to order at 2 o'clock P. M., in the District Court room, with the President, John D. Milliken, in the chair.

The reading of the minutes of the last meeting was dispensed with.

The Executive Council, through its chairman, H. L. Alden, reported to the Association the names of the following applicants for membership, and recommended their election: F. B. Dawes, M. T. Campbell, R. T. Herrick, Robert C. Heizer, E. G. Wilson, F. L. Irish, John F. Switzer, A. H. Vance, James H. Lowell, J. E. Dolman, R. E. Morris, Eugene Hagan, J. G. Mohler, John N. Ritter, Ed. O'Bryan, J. F. Tufts, C. E. Elliott, Wm. Gilluly, Will T. Walker, Joseph G. Lowe, W. A. Calderhead, C. A. Cox, Clad Hamilton, W. J. Gregg, W. T. Reed, C. B. Daughters, and H. J. Bone.

The report of the Executive Council was adopted, and the lawyers named were duly elected members of the Association.

On motion of A. H. Horton, it was ordered that the delivery of the addresses on the programme for the afternoon be postponed till 9:30 to-morrow morning.

The Committee on Amendments to Laws presented the following report, which, after general discussion and comment, was received and ordered entered upon its record:

To the Kansas State Bar Association: The Committee on Amendments to Laws have not been able to have such exchange of views as desired in order to enable them better to report at this time. Viewing the field over for the mere purpose of finding flaws, and noting defects in the laws, or in our judicial system generally, one comes upon many subjects prolific in temptation to make

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changes. There is probably not a lawyer in the State, who in the past year has not found himself encompassed about by legal obstacles and contrivances which seem to him very unjust, or at least quite the improper thing for that particular case. And should he have the honor of a seat in either of the legislative bodies, one of the first duties he realizes he owes to the people is to introduce a bill to amend and change the law so that he shall not be so caught again.

Many of the amendments of our statutes in the past, have no doubt been suggested in this way. And so, in like manner, or by a better and broader experience with existing conditions, changes are brought about, sometimes to result in the confusion of the law, and again in real and meritorious amendment. As the Legislature has had some days the start of your committee, there now seems no special need to indulge in many additional suggestions of needed change. Those already proposed by bills introduced, if adopted, will keep us busy for some time annotating the General Statutes of 1889, and trying to "off with the old and on with the new" provisions of the law. Under these conditions it seems more essential to call attention to the general subject of making amendments, and, if possible, to impress every lawyer with the importance of this subject. No one should undertake the drawing of a bill which, if passed, would change existing laws, unless he fully comprehends not only what he wants to accomplish, but also what the present law is. On our statute books now, we have acts which are a constant annoyance and vexation to the courts. They abound in inconsistent provisions, and in some cases require the doing of things at impossible times. To some of these situations we adjust ourselves and by force of familiarity become reconciled, raising no complaint lest by an attempted remedy of the ills we bear we invite other and greater ills we know not of. Some of you may have found fair illustrations of this in the garnishment laws, and those providing for assignments for the benefit of creditors.

Amendments of the laws are in some respects much like the patching of old clothes: there comes a time when patching must end and renovation begin. Kansas has nearly reached that stage, when the only effective and efficient amendments must be brought about by revision. In the meantime, every proposition to amend the general laws of the State should be scrutinized and formulated with the utmost care, and with special aim to the expression of intent.

Why would it not be an improvement upon present legislative methods to have a committee in each branch of the Legislature to whom should be referred, before its final passage, every bill amendatory of the law? After the proper regular committees have acted, and the two houses have approved the proposed amendment, let the expert hand see that the act is worded so as to clearly express the legislative intent, and that it harmonizes with the laws remaining upon the same subject. Careless and obscure expressions in the law are a never-failing source of litigation. A little critical examination of expression, and practical application of the rules of syntax, would no doubt be found of great value, and lead to at least a partial disuse of some of the many rules, recognized as standard, but not infallible, in helping to guess what the Legislature intended to say.

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Briefly referring to a few subjects for amendment, the first that claims attention is the judicial system of the State. That it is wholly inadequate, every well-informed man admits. That the trouble is constitutional, few lawyers will deny. A change, of a radical nature, of the judiciary article of the State constitution, is urgently demanded. False notions of economy have thus far defeated all efforts for relief.

The Redemption Law, enacted at the last session, ought to be wiped out, and a new one written in its stead. The present law is confusing, and bears all the ear-marks of having been made up by dividing a number of different bills into sections, and, after a generous mixing, drawing out a certain number of segments, which were put together as a new bill. The Supreme Court has declared part of it to be invalid — the best part, too — and the demolition should be finished by the Legislature. It is equitable and right that there should be a reasonable period, after sale, for the redemption of real estate. But there is no advantage or justice in keeping the purchaser at judicial sale out of possession, in all cases, during the period of redemption. In cases of homesteads, that is well enough; but when the land is unoccupied as a residence by the owner, the purchaser should be given possession upon confirmation, subject to the right of redemption in such reasonable time as may be provided. The cost and delay to make sale under mortgage can also be improved upon.

The Australian Ballot Law has met with great favor. It is a grand and good improvement over old methods. Amendments to this should provide a different plan for determining the right to have the name of any candidate printed on the ballot, so that the question might be decided, as far as possible, free from partisan bias. The illiterate voter should either suffer disfranchisement because of inability to prepare his ballot, or be permitted to take a friend of his own choice into the booth with him to arrange it. The situation is such that the mass of the people cannot much longer shut their eyes to the needs of the State in this respect. Kansas will ere long, we hope, be able to point with some degree of pride to her judicial system. The executive and the legislative branches of the government are taking active steps to relieve the Supreme Court of its over-burden of work. This can at best be only temporary. The people of the State desire but one court of final appeal — but this must be constituted so as to be equal to the business demands of the age.

The jury system of the State would be improved by some very radical changes. Certainly the manner of selecting the names that shall be put into the jury-box is not the best. No one can attend any of the district courts without being convinced of the utter incompetency of many of the men returned on the panel. The litigant who goes into court with a just cause, has a right to have that cause passed upon by a jury that is both honest and intelligent. At present, the several township trustees select the jurors. These trustees are often men who have very little conception of the magnitude of jury duty, and select because of favor rather than fitness. The jury trial has grown in disfavor largely because of imperfect and vicious systems. Interests of life and property should be intrusted to hands that are clean and heads that are clear. So long as the trial by jury is retained, no effort should be spared to make it

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the best. A jury commission in each county to select jurors from the body of the tax-payers of the county would undoubtedly furnish a higher type of juryman. The board of county commissioners might be authorized to prepare a jury list, at the first meeting in each year, of the names of those who are to serve for that year, and thus have a jury commission without additional county officers. It is time, too, to seriously consider the advisability of doing away with the requirement of unanimity in the verdicts of juries; but this can only be reached by an amendment to the constitution.

Some cases of very unjust operation of the law have been brought to the attention of the committee by reason of the power given to probate judges to make interlocutory orders in cases pending in the district court, in the absence of the district judge. This is especially so in cases of injunction. A probate judge may, in a case entirely unwarranted by the facts, grant a temporary order of injunction upon a wholly insufficient bond. When the case is brought to the attention of the district judge, he may promptly make an order to dissolve the injunction, but it is continued in force by an appeal to the Supreme Court, to the great injury of a defendant. The remedy by action for damages may be futile because of an inadequate form. Many probate judges are inexperienced in the law, and improvidently make such orders. It is of course often necessary that a restraining order be speedily granted, and the remedy would be unavailing did it wait on an absent judge. This, however, could be provided for by empowering the probate judge to grant a temporary restraining order, until such time as an application could be presented to the district judge for a temporary injunction.

These are a few of the more important matters that have been called to the attention of the committee, and they are presented as a mere introduction to what might be said on this subject.

T. F. GARVER, *Chairman.*
FRANK DOSTER.
JOHN W. ROBERTS.
LUCIEN EARLE.
T. P. FENLON.

The Treasurer reported that a considerable number of the members of the Association had neglected to remit their annual dues for 1894. The result of the discussion of this question of delinquent dues, was the adoption of the following resolution:

Resolved, That all members continuing in arrears for dues to the Association, for the year of 1894, and the years preceding, for a period of sixty days from this day, be dropped from the roll of membership; and that the names of all such members be omitted from the roll published in the printed record of the proceedings. The Treasurer shall forthwith notify the members of the Association of this action.*

* The early publication of these proceedings does not leave sufficient time for due notice to members of the requirements of this resolution, and therefore, by order of the Executive Council, the Secretary publishes the full list of members as heretofore — leaving the question of dropping names from the roll for delinquent dues to the further action of the Association at its next meeting.

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On motion of Sam. Kimble, the following committee was appointed to nominate to the Association officers for the ensuing year: Sam. Kimble, A. L. Redden, J. D. McFarland, E. A. McFarland, W. A. Johnston.

The special committee of the Association, appointed under the resolution adopted at the last meeting to present to this Association its conclusions concerning the best remedy for relief of the Supreme Court, presented its report as follows:

The State Bar Association—GENTLEMEN: Your committee appointed to carry out the provisions of the resolution concerning needed relief of the Supreme Court, adopted at the last session of this Association, beg leave to report that after much consultation with the bench and bar of the State it prepared a bill providing for a Court of Appeals. At the request of the committee, Hon. S. M. Gardenhire, of Shawnee county, introduced the bill in the House, and will urge its adoption. A copy of the bill is hereto attached.

Respectfully submitted.

R. B. WELCH.
M. B. NICHOLSON.
WM. THOMSON.
H. L. ALDEN.
THOS. P. FENLON.

AN ACT to provide for the more speedy administration of justice by creating an additional court, providing for the appointment, election, duties, fees and salaries of the officers thereof; prescribing the jurisdiction, powers, practice, and proceedings of such court; and providing for the transfer of cases thereto from the Supreme Court.

Be it enacted by the Legislature of the State of Kansas:

SECTION 1. That there be and hereby is created a court of record for the State of Kansas to be styled the Court of Appeals; which court shall consist of five persons who are citizens and electors of the State of Kansas, learned in the law, and appointed and elected as judges of said court in the manner hereinafter provided.

SEC. 2. That upon the taking effect of this act the Governor of the State of Kansas shall appoint five suitable persons as judges of said court, three to hold their offices until the first Monday in January, 1897, and until their successors shall have been elected and qualified, and two to hold their offices until the first Monday in January, 1899, and until their successors shall have been elected and qualified. At the general election in 1896 and at each general election occurring at intervals of four years thereafter, there shall be elected three suitable persons as such judges, and at the general election in 1898 and at each general election occurring at intervals of four years thereafter, there shall be elected two suitable persons as such judges. The terms of office of the judges so elected shall be four years, commencing on the first Monday in January succeeding their election, and until their successors shall be elected and qualified. Each person appointed or elected as judge aforesaid shall, within twenty days after receiving the notice of his appointment or election, qualify as such judge by

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taking the proper official oath and filing the same in the office of the Secretary of State.

SEC. 3. The first session of said court shall be held at such time as the Governor shall designate, and there shall thereafter be held two regular sessions in each year, commencing on the first Tuesday of January and July, respectively. There shall also be held such adjourned and special sessions as said court may deem necessary. All of said sessions shall be held at the capital of the State.

SEC. 4. At said first session, and at the first session ocurring after each election of any of said judges, the said judges shall elect one of their number as presiding judge. In case of a vacancy in the office of a presiding judge so elected, the remaining judges shall elect one of their number to preside until the next election of any of said judges.

SEC. 5. In case of a vacancy in the office of either of said judges, the Governor shall appoint some suitable person to hold the office until the next general election.

SEC. 6. Said court shall appoint suitable persons to act as clerk and reporter, and may from time to time, when necessary, appoint a marshal of said court. Such appointees, upon due qualification, shall hold their respective offices during the pleasure of said court. Such appointees shall file their official oaths and such bonds (if any) as the court shall require, with the Secretary of State.

SEC. 7. The duties and powers of such clerk, reporter, and marshal, in all matters pertaining to said Court of Appeals, shall be the same as the duties and powers of the clerk, reporter and marshal, respectively, of the Supreme Court in matters pertaining to the Supreme Court.

SEC. 8. Each of said judges may employ a stenographer at the expense of the State of Kansas.

SEC. 9. The said Court of Appeals shall be a court of record inferior to the Supreme Court and superior to all other courts existing under the laws of the State, and shall have exclusive jurisdiction, in all cases not hereinafter in this section enumerated, of appeals and proceedings in error to reverse, vacate or modify judgments and orders of all inferior courts of record, except probate courts. Said Court of Appeals shall not have jurisdiction in the following cases, to wit: First, of proceedings in error in actions brought for the recovery of money where the amount involved is more than two thousand dollars, exclusive of interest and costs; second, of appeals on behalf of the State in criminal actions where the crime charged is a felony; third, in appeals on behalf of a person convicted of crime where the party appealing has been convicted of a felony; fourth, in proceedings in error in actions brought under article 29 of chapter 80 of the General Statutes; and fifth, in proceedings in error in cases arising under the tax or revenue laws of the State, in which the State or any municipal subdivision thereof is a party and will be affected by the decision thereof.

SEC. 10. All the provisions of law concerning the practice and proceedings in the Supreme Court, which in their nature can be made applicable to the said Court of Appeals, are hereby made to apply to the practice and proceedings in said Court of Appeals. Stay of execution and suspension of judgments and or-

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ders of inferior courts pending proceedings in error shall be obtained in the same manner, and upon the same terms, as are now provided by law for stay of execution in matters taken to, or pending in the Supreme Court; the provisions of law concerning any action by the Supreme Court in the premises being hereby made applicable to the Court of Appeals. The decisions and opinions of said Court of Appeals shall be reduced to writing, filed and published, and its mandates transmitted to inferior courts in like manner as is now provided by law concerning the Supreme Court. The said Court of Appeals shall keep like records and files as the Supreme Court is by law required to keep. The decisions, orders and mandates of said Court of Appeals shall have as full force and effect concerning matters pending or determined therein as are given by law to the orders and mandates of the Supreme Court concerning matters pending or determined in said Supreme Court. The said Court of Appeals is hereby given as full power to prescribe rules of practice and proceedings therein as is given by law to the Supreme Court to prescribe rules applicable to said Supreme Court.

SEC. 11. Proceedings in error in the Supreme Court may be had to reverse, vacate or modify judgments and orders of said Court of Appeals in the following cases, to wit: First, in cases involving State or United States constitutional questions, or arising out of Federal relations; and second, in cases involving the title to real estate where the party instituting such proceeding in error in the Supreme Court shall file with his petition in error the affidavit of himself, his agent or attorney, that the real estate in controversy is worth more than two thousand dollars. In all other cases the decisions of said Court of Appeals upon matters within its jurisdiction shall be final and conclusive, and no appeal or proceedings in error shall be allowed therefrom.

SEC. 12. If, after commencing any proceeding in error in the Supreme Court or in the Court of Appeals, it shall be discovered or determined that the subject-matter of such proceeding is not within the jurisdiction of the court in which it is commenced, but is within the jurisdiction of the other of said courts, such proceedings may, upon motion, be transferred to such other court, provided that the court in which it shall have been commenced shall conclude that the plaintiff in error has commenced it in good faith, and not for the mere purpose of delay; and in such cases such proceedings in error shall be treated as if commenced in the court to which it shall be transferred at the date of its commencement in the other of said courts.

SEC. 13. The Supreme Court may, according to its discretion, transfer and certify to said Court of Appeals for trial and adjudication any cases now pending in the Supreme Court, the subject-matter of which is within the jurisdiction of said Court of Appeals, and when so transferred and certified, notice thereof being given to the parties plaintiff and defendant, by the Clerk of the Supreme Court, the said Court of Appeals shall hear and finally determine said cases as if brought immediately from the district or other inferior courts, by proceedings in error.

SEC. 14. In commencing in the Supreme Court a proceeding in error to reverse, vacate or modify a judgment, decision or order of the Court of Appeals, it shall not be necessary for the plaintiff in error to attach to his petition in er-

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ror, or to file in the Supreme Court any transcript of the record of the Court of Appeals. In such case, when the petition in error has been filed, proper security for costs given, and a summons in error served upon or waived by the defendants in error, the clerk of the Supreme Court shall in writing give notice thereof to the clerk of the Court of Appeals, who shall then transmit to the clerk of the Supreme Court all transcripts, copies of transcripts, and original papers on file in the office of the clerk of the Court of Appeals in the case sought to be reviewed, and also a duly certified transcript of the proceedings of the Court of Appeals therein. No further copies of any of said papers or transcripts shall be made except by order of the Supreme Court. If such proceedings in error be not dismissed, the Supreme Court shall issue its mandate therein directly to the inferior court whose judgment or order was sought to be reversed, vacated or modified by the proceedings in said Court of Appeals.

SEC. 15. When a proceeding shall be transferred under section 12 of this act, the papers, transcripts and copies on file shall be transmitted, and no further copies thereof shall be made except by order of court.

SEC. 16. No proceeding in error in the Supreme Court to reverse, vacate or modify a judgment, decision or order of the Court of Appeals shall be allowed unless the same shall be commenced within thirty days after such judgment, decision or order shall have been entered of record in the Court of Appeals. No exception to any decision of the Court of Appeals shall be necessary to entitle a party to have such decision reviewed by the Supreme Court; but no party who shall have failed to file a brief in accordance with the rules of such Court of Appeals shall be entitled to have such review.

SEC. 17. In all cases transferred under section 12 of this act, and in all cases in which the Supreme Court shall review the decision of the Court of Appeals, the costs in both courts shall abide the final decision, and the court making the final decision shall render judgment for the costs in both courts and shall have power to tax the same.

SEC. 18. Each of said judges of said Court of Appeals shall receive an annual salary of three thousand dollars, payable in monthly installments out of the State treasury. The clerk, reporter and marshal of said Court of Appeals, and the stenographers for said judges, shall respectively receive the same fees and salaries as are provided by law for like officers of the Supreme Court.

SEC. 19. The Supreme Court shall have superintending control over the said Court of Appeals, and the last previous ruling of the Supreme Court on all questions of law and equity shall in all cases be controlling authority in said Court of Appeals.

SEC. 20. Three judges of said Court of Appeals shall constitute a quorum for the transaction of business of the said Court of Appeals, and no decision of said court shall be made or rendered without the concurrence of at least three of the judges thereof.

SEC. 21. Until suitable rooms for said Court of Appeals are furnished in the capitol building by the Executive Council, the said Court of Appeals shall occupy the Senate Chamber, and committee-rooms adjoining thereto, during such time as the same are not in use by the Senate.

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SEC. 22. The Court of Appeals shall have a seal bearing the words, "Kansas Court of Appeals." Such seal shall forthwith be procured by the Secretary of State and delivered to the clerk of said court, and he shall be the custodian thereof.

SEC. 23. All acts and parts of acts inconsistent herewith are hereby to that extent repealed.

SEC. 24. This act shall be in force from and after its publication in the official State paper.

John W. Roberts presented the following resolution upon this subject:

Whereas, The condition of business in the Supreme Court of the State is such as to amount to a practical denial of justice to honest litigants because of the fact that the docket of that court is now fully six years behind; and

Whereas, The recent experience that an able and industrious Supreme Court Commission, after six years of constant labor in aid of the Supreme Court, left it further behind in its business than when the commission was created — thus demonstrating that two appellate courts are wholly inadequate to the needs of the State: therefore, be it

Resolved, That the Bar Association of the State of Kansas, mindful of the just demands of the people that justice should be speedily and carefully administered, respectfully urge upon the present Legislature the passage of a law establishing two courts of appeal inferior only to the Supreme Court, and superior to all other courts, but whose judgments within the jurisdiction granted shall be final and conclusive.

After a thorough discussion and consideration of this general subject, the committee was instructed to urge the passage by the Legislature of the bill presented, with such reasonable modifications as may seem necessary to secure the success of the measure.

The Association adjourned to meet in Representative Hall at 7:30 o'clock, to listen to the annual address of Justice David J. Brewer; and to meet again to-morrow morning at 9:30 o'clock at the District Court room, for the further business set down upon the programme.

JANUARY 16 — EVENING SESSION.

Justice David J. Brewer delivered the annual address, upon "Some Thoughts About Kansas."

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JANUARY 17— MORNING SESSION.

The Memorial Committee, through its chairman, John Guthrie, presented the following report, which was adopted, and ordered entered upon the records of the Association:

To the State Bar Association: Your committee beg leave to report that so far as your committee has been advised, only one member of this Association has departed this life since the last meeting, to wit, Hon. Aaron Sibley Everest, of Atchison. He was born at Peru, Clinton county, New York, April 23d, 1835, and departed this life at his home in Atchison, Kansas, October 22d, 1894, after a protracted illness. He graduated from the University of Michigan at Ann Arbor, and afterwards studied law in the office of Judge Simmons at Keesville, New York, and was admitted to the bar at Plattsburg, New York, and practiced a short time at Champlain in that State. He was married to Marie M. Darrah, at Peru, April 28th, 1856, whom he left surviving him, as also two children, Frank and Kittie C.

Soon after his marriage he left New York for the West, stopping at La Crosse, Wisconsin, and High Forest, Minnesota, respectively, a short time, and locating at Austin, Minnesota, in the fall of 1856, engaging in the active practice of his profession there continuously until his removal to Atchison, Kansas, in 1871, except during three years of service in the war for the Union. He recruited Company C, of the Second Minnesota Cavalry, and was commissioned as its captain, in which rank he was mustered out at the close of the war, although he had been commissioned as colonel a few days before. His service was mostly in the Northwest, under General Sully and against the Indians.

Col. Everest was a member of three law partnerships during his practice at Atchison, namely: Everest & Granawalt, Otis & Everest, and Everest & Waggener. After the dissolution of the firm last named he retired from active practice. He also served one term in the Kansas Senate. He attained and maintained high rank as a lawyer in Kansas; his legal battles were well and ably fought, and his victories were many and important. He felt a pride, not often expressed, in his ancestry, being a descendant of Charles Carroll of Carrollton, and the son of an able New York judge; but he was himself a great force, and in life's retrospect might well take more satisfaction in his own well-earned achievements than in any reflected glory from distinguished progenitors. A great legal light went out when Aaron Sibley Everest died, and the Kansas bar has sustained serious loss thereby.

In this connection your committee beg leave to note the sad and untimely death of the lamented Hamilton J. Dennis, late State Librarian. Mr. Dennis was born June 11, 1836, on a farm in Lenawee county, Michigan, near the town of Adrian. At nineteen years of age he entered the University of Michigan, and graduated four years thereafter with the highest honors of his class. He afterwards entered the law department of the University, and completed his course in 1861. Many of Mr. Dennis's colleagues in the University are dis-

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tinguished in the professions and in letters. Chief Justice Albert H. Horton, of our own State, was one of his colleagues in the University.

Soon after he finished his college work he removed from Michigan to Leavenworth, where his unusual ability and splendid personal qualities received immediate recognition. He was appointed State Librarian March 1st, 1881, and held that important position until his death, which occurred at his home in Topeka, October 12th, 1894. He was sincerely devoted to his duties as State Librarian, and the growth and usefulness of our great State library and much of its worth and value are due to the watchful care and enterprise of Mr. Dennis in its behalf. The bar of the State is under lasting and enduring obligations to Mr. Dennis for his fidelity to duty and his obliging disposition. He was a cultured gentleman in the broadest sense, and courteous and dignified in all his relations with his fellow-men in private and public life. Though Mr. Dennis was not a member of this Association, your committee submit that his services to the bar and the public merit this brief notice.

JOHN GUTHRIE,
DAVID MARTIN,
J. R. MCCLURE,
Committee.

The special committee appointed at the last meeting to recommend to this Association and to the Legislature, a bill regulating admissions to the bar in the State of Kansas, presented the following report, through its chairman, N. H. Loomis:

The committee appointed by this Association at its last meeting, to report with reference to changes in the law relating to the admission of members of the bar, beg leave to present the following:

It is the opinion of the committee that too many unqualified persons are admitted as attorneys and counselors at law in this State. Whatever may be the theoretical merits or demerits of the present system of admitting attorneys, the practical results are bad. Many persons have been admitted to the bar in this State, and are now masquerading as lawyers, who have not the remotest conception of any of the elementary principles of law.

Applicants are frequently admitted with absolutely no examination as to their qualifications, and but few of the examinations which are actually held are sufficiently thorough to test the candidate's knowledge of the law. It is not to be expected that a committee selected from the bar during the progress of a term of court, in which the lawyers have important cases for trial, can or will prepare to properly examine applicants for admission to the bar. As a rule, the attorneys best qualified to make the examination decline to participate, for want of time. Furthermore, no lawyer likes to report adversely upon the application of a person with whom he is well acquainted, and who has read law in his own office or in the office of some attorney located in the same town, even though he be convinced that the candidate is not properly qualified to practice law, and the easiest way out of such a difficulty is to recommend his admission, with the hope that he will carry on his practice in some other part

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of the country. If the stories of lawyers are to be believed, many are the attorneys who have been admitted with the distinct understanding that they are to practice law in some neighboring State, and not in the State of Kansas.

No system can be devised by which all unqualified persons can be prevented from being admitted to the bar. Your committee believes, however, that many of the present evils may be remedied by conferring the power of admitting attorneys upon the Supreme Court. Let that court make all necessary rules for the admission of members of the bar, and appoint a board of examiners, who will hold their positions for a sufficient period of time to enable them to make proper preparation for a thorough examination of all applicants.

Furthermore, let the examinations be made in the Supreme Court room. A party will not be apt to come to Topeka and present himself for examination unless he is satisfied in his own mind that he can safely withstand a rigid examination. And no attorney will care to have a student who has read law in his office make a poor showing in such a conspicuous place. Your committee believe that such a system will result in the rejection of many unqualified applicants, who, under the present system, would be admitted; that it will stimulate students to a more diligent search of knowledge concerning legal principles, and will elevate the standard of the bench and bar of the whole State.

Your committee beg leave to suggest that it might be advisable to have annual or semi-annual examinations of all members of the bar, to test their recollection of legal principles and the efficiency of their mental powers. How many of us would be dropped if such a law were passed?

In 1891 the power to admit to the bar was vested in appellate courts in the following States: Colorado, Connecticut, Illinois, Louisiana, Montana, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Rhode Island, South Carolina, Vermont, Virginia, and Wisconsin.

In the report of the Committee on Legal Education, of the American Bar Association, presented at the meeting in Boston in August, 1891, will be found an interesting lot of responses from the chief justices of the various States to the interrogatory as to whether they thought it desirable to take from the inferior courts the power to admit to the bar and lodge it in the courts of last resort, to the end that there might be a uniform standard governing the examination of candidates. In nearly all of the answers, examinations by courts of last resort were favored.

A bill relating to this matter has already been introduced in the Legislature by Mr. Caldwell, a Representative from Douglas county, which embodies the ideas of this committee. A copy of the bill is attached to and made a part of this report. If this bill meets with the favor of this Association, and receives the active sympathy and support of members of the bar, there is no reason why it should not become a law.

FRANK DOSTER.
N. H. LOOMIS.

AN ACT to amend sections one and two of chapter eleven of General Statutes of Kansas of 1868, being an act entitled "An act relating to attorneys at law," and to repeal sections one and two of said chapter eleven.

Be it enacted by the Legislature of the State of Kansas:

SECTION 1. No person shall be permitted to practice as an attorney and

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counselor at law, or to commence, conduct or defend any action or proceeding in which he or she is not a party concerned, who is not twenty-one years of age, and who is not a citizen of the United States, or has not declared his intention of becoming a citizen thereof, and who has not been previously admitted to the bar by an order of the Supreme Court of this State, except as hereinafter provided. This section shall not apply to persons admitted under preëxisting laws.

SEC. 2. Examinations for admission to the bar shall be held in the Supreme Court room at Topeka, by the Supreme Court or two judges thereof, or by a board of examiners which shall be appointed by said court to serve for one or more years. The board of examiners shall be composed of not less than three persons learned in the law, who may conduct such examinations and report the result thereof to said court. The Supreme Court shall fix the times when examinations shall be held: *Provided*, There shall be at least two examinations held each year. The Supreme Court shall also prescribe and publish rules to govern such examinations.

SEC. 3. To entitle a person to be admitted to such examination, the applicant must produce a certificate from an attorney at law setting forth that he or she is a person of good moral character, and that he believes the applicant to be a person of sufficient legal knowledge and ability to discharge the duties of an attorney and counselor at law; and the applicant shall further satisfy the court or board of examiners that he or she has regularly and attentively studied law during a period of two years, the last year of which was in the office of a practicing attorney. The applicant shall thereupon be examined touching his or her qualifications, and if on such examination or the report of said board the court or judges are satisfied that he or she is of good moral character and has sufficient learning and a competent knowledge of law, the oath hereinafter provided shall be administered to him or her, and an order shall be made on the journal that he or she be admitted to practice as an attorney and counselor at law in all courts of record and in inferior courts of this State. Any person coming into the State for the purpose of making it his or her permanent residence, upon producing satisfactory evidence that he or she has studied law for the period of two years under the tuition of some attorney at law or some duly organized law school, or who has been duly admitted an attorney at law in some court of record within the United States, may be admitted to such examinations upon producing satisfactory evidence that he or she is of good moral character.

SEC. 4. The Supreme Court shall, upon application of the chancellor or president of any university or college within this State which has a department or school of law duly organized, and which provides for a two-years course of study in the law, request the board of examiners to attend the commencement exercises of such department or school of law, and examine such graduates of such department or school as may present themselves for examination in reference to their qualifications to practice law; and the Supreme Court or a district court of this State shall, upon the production of a certificate of such committee, or a majority thereof, that in their opinion the person therein named has sufficient legal knowledge and ability to discharge the duties of an attorney and

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counselor at law, admit such person to practice law in all courts of record and in inferior courts of the State.

SEC. 5. Any person producing a certificate admitting him or her to practice law in the highest court of record of any other State may be admitted to practice law without examination, upon motion, by the Supreme Court or any district court of this State.

SEC. 6. The members of the board of examiners herein provided for shall be allowed and paid the expenses actually incurred by them in the performance of their duties.

SEC. 7. Sections one and two of chapter eleven, General Statutes of 1868, be and the same are hereby repealed.

SEC. 8. This act shall take effect from and after its publication in the official State paper.

John H. Mahan, one of the members of the special committee upon the subject of Admissions to the Bar, presented the following individual report:

ABILENE, KAS., January 16, 1895.

To the President and members of the State Bar Association—GENTLEMEN: I regret my inability to meet the other members of your committee appointed to consider what, if any, legislation is needed to govern admissions to the bar. I have given the subject my best and most conscientious consideration, and have arrived at the consideration that the present law is sufficient, and that what we need, instead of additional legislation, is a manly, independent and thorough adherence to and application of the legislation we already have.

It has been suggested to me that it would be better to have the matter placed in the hands of the Supreme Court. I cannot see any advantage to be derived therefrom. The court is now so far in arrears with its business that in justice to litigants before it, no additional burden should be imposed upon it. Nor can I believe that the members of the court, so far as the duties respecting the admissions to the bar are concerned, are more competent than the judges of the district bench; nor could the court have at its command better material to aid it in the duty than can be had in the district court, if the district judges act impartially in the premises.

It has also been suggested to me that applicants for admission should be required to apply to a court held in their own district, or, more accurately speaking, in the district in which they reside. To this I have to say, that if an applicant is worthy and entitled to admission, it is immaterial where he makes his application if the court and the members of the bar constituting the committee under the statutes do their duty.

To place the matter in the hands of the Supreme Court, imposes upon the applicants an additional burden of expense, and especially upon those residing in more remote portions of the State. What the bar needs most, as it seems to me at this time, is to purify itself by ridding itself of unworthy members already admitted, if what we hear frequently in the courts can be relied upon.

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Within a few weeks I have heard statements made openly in a court of great authority and dignity in this State, during the conduct of the case, which, if true, or even half true, should cause the disbarment of several members of the bar of the State. My experience leads me to the conclusion that the difficulty lies not so much in the character and qualifications of members when admitted, as to the habits and practices that creep in and are acquired thereafter.

I desire to express my regrets that I am unable to be present at the coming meeting. Very respectfully,

J. H. MAHAN.

The general recommendations of the committee were adopted, and it was resolved to urge upon the Legislature the wisdom and importance of the passage of the bill presented by the committee.

The annual address of the president was delivered by John D. Milliken.

The Association adjourned till two o'clock P. M.

JANUARY 17—AFTERNOON SESSION.

H. L. Alden, President of the Executive Council, read to the Association letters from George R. Peck and A. W. Benson, expressing their regrets at not being able to be present at this meeting of the Association.

D. M. Valentine delivered an address on the "Supreme Court of Kansas."

W. C. Perry delivered an address on "Some Desirable Amendments to Federal Statutes."

D. W. Eaton, a student in the law department of the University of Kansas, delivered an address on "Combinations in Restraint of Trade."

Howel Jones, the Treasurer of the Association, presented the following reports, which, having been found correct by the Executive Council, were received and adopted:

REPORT OF TREASURER.

Balance on hand at date of last report	$472 63
Receipts since January 20, 1884:	
Admission fees	102 00
Dues of 1893	72 00
Dues of 1894	249 00

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Expenditures, vouchers attached:

Jan. 20, Crane & Co., printing programs, etc	$9 75	
Jan. 20, J. D. Milliken, entertainment of Dr. Rogers	15 00	
Jan. 20, C. J. Brown, postage, notices of annual meeting	10 00	
Jan. 20, C. J. Brown, paid for janitor	3 00	
Jan. 20, Sam. Kimble, paid Crane for banquet tickets	2 50	
Jan. 20, J. C. Gordon, banquet	126 00	
Jan. 20, Treasurer, stamps	3 00	
Jan. 20, sundries for banquet	14 55	
Mar. 1, Reed & Son, chairs for annual banquet	5 00	
Mar. 26, Crane & Co., 200 circulars	1 75	
Apr. 24, Treasurer, stamps	2 00	
May 10, A. J. Huntoon, hack service	8 00	
Oct. 3, Geo. W. Crane & Co., 1,000 proceedings	200 00	
Dec. 20, Treasurer, stamps, cards, and letter file	9 15	
Jan. 10, 1895, Treasurer, goods for banquet	54 20	
Jan. 15, Crane & Co., balance due on 1,000 proceedings	17 75	
Jan. 15, C. J. Brown, stamps and express	13 75	
Jan. 16, Crane & Co., printing programs, etc	17 75	
Jan. 16, C. J. Brown, stamps, postals	7 50	
Jan. 16, 1895, amount on hand	374 98	
	$895 63	$895 63

TREASURER'S SUPPLEMENTAL REPORT.

Jan. 19, 1895, amount on hand as reported by Treasurer, Jan. 16, 1895, $374 98

Receipts:

Dues of 1894, collected since last report		66 00
Admission fees, paid by members Jan. 17, 1895		135 00

Additional expenditures:

Jan. 17, Hack hire for judges, stenographer, cigars for banquet, janitor at court-house	$56 00	
Jan. 18, The Throop Hotel Company, banquet	227 50	
Jan. 18, Reed & Son, chairs for Representative Hall	12 50	
Jan. 19, R. B. Welch, copies Appellate Court Bill	10 00	
Jan. 19, C. J. Brown, janitor work Representative Hall	6 75	
Jan. 19, stamps	4 00	
Jan. 19, Crane & Co., envelopes and letters requesting members to remit dues of 1894	4 10	
Jan. 19, 1895, balance on hand	255 13	
	$575 98	$575 98

Respectfully submitted.

HOWEL JONES, *Treasurer.*

Examined and approved by Executive Council.

SAM. KIMBLE, *Chairman.*

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The following resolution was adopted:

Resolved, That it is the sense of this Association that the constitution of the State of Kansas ought to be remodeled, and that a constitutional convention ought to be called for that purpose.

On motion of Sam. Kimble, it was ordered that copies of the address of W. C. Perry be sent to members of Congress, and that the delegates from this Association to the American Bar Association and the National Bar Association be directed to urge upon those Associations the reforms advocated in this address.

It was ordered that the feature of this programme, calling for an address by a student of the law department of the State University, to be designated by the dean of such department, be continued as one of the permanent features of the programme of this Association.

The Committee on Nomination of Officers for the ensuing year presented the following report:

President—H. L. Alden.
Vice-President—J. B. Larimer.
Secretary—C. J. Brown.
Treasurer—Howel Jones.
Executive Council—Sam. Kimble, chairman; T. B. Wall, E. A. McFarland, J. D. McCleverty, A. A. Godard.
Delegates to American Bar Association—Jno. E. Hessin, R. F. Thompson, Jno. W. Roberts.
Delegates to National Bar Association—A. L. L. Hamilton, F. D. Mills, W. J. Patterson.

These nominations were unanimously ratified by the Association.

The following standing committees were appointed by the President, H. L. Alden:

Judiciary Committee—W. A. Johnston, Silas Porter, J. G. Lowe, H. Whiteside, John C. Sheridan.
Committee on Amendments to Laws—C. H. Kimball, John N. Ritter, Eugene Hagan, R. S. Hick, Ed. O'Brien.
Memorial Committee—A. M. F. Randolph, Chas. Bucher, W. H. McBride.

The addresses delivered before the Association at this meeting appear in the following pages.

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By a rising vote, the thanks of this Association were unanimously extended to Justice David J. Brewer for his presence at this meeting, and for his very able address.

The Association expressed to Judge Z. T. Hazen, of the District Court of Shawnee county, its appreciation of his kindness in granting it the use of the District Court room for its business sessions.

Adjourned.

C. J. BROWN, *Secretary.*

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ADDRESSES.

Some Desirable Amendments to Federal Statutes.

By W. C. PERRY.

The subject which I agreed to speak on at first seemed comparatively simple, but further thought has developed the fact that it is exceedingly complex. In 1874, (18th Statutes, 113,) Congress, having been brought to a conviction that the laws of the United States should be revised, passed an act "to revise and consolidate the statutes of the United States," and charged the Secretary of State with the duty of causing to be prepared for "printing, publication and distribution the Revised Statutes of the United States." Under this law a volume entitled "The Revised Statutes of the United States" was prepared by a commission appointed for that purpose, and published; but the matter therein contained being regarded as incomplete, the Congress again, on March 2d, 1877, (19th Statutes, 268,) provided for the appointment of a Commissioner for the purpose of preparing and publishing a new edition of such Revised Statutes. Under this law an ex-Attorney General of the United States, Mr. George S. Boutwell, was appointed, and a volume by him prepared pursuant to such act of Congress is now the latest revision of the laws of the United States in existence, except as it has been added to in the way of two editions of a supplement to such Revised Statutes, the first edition being published in 1881 and the second edition in 1891. These editions of the supplement, although edited with great care, do not pretend to be a revision nor a consolidation of the statutes, but simply a reproduction of laws of a general nature enacted since the publication of the Revised Statutes in 1878; and this reproduction, while pointing out generally the laws which up to that time had been either repealed or amended, is simply a reprint of the statutes in chronological order without any attempt to gather under separate headings all the statute law upon the same, or cognate, subject-matters. So it is that the only published volumes outside of the Statutes at Large which treat of the statute laws of the United States are the Revised Statutes of 1878 and the supplement thereto above mentioned. It follows that the laws are very much of a hotch-potch, and if the people are to know what the law is, if they are to be advised of their duties and liabilities as expressed in the statutes of the United States, a further attempt should be made to not only revise those laws, but to revise them in such a way, and under such appropriate headings, as will enable the seeker, and not alone the student, to advise himself of what those laws are.

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THE CRIMINAL LAWS.

And as my experience with such laws has been somewhat intimate, it is natural that the worst vice of the system should first present itself to my mind. The criminal laws should be gathered together, and amplified and amended. There is no connected thought apparent in the criminal statutes of the country, nor in the laws in reference to criminal procedure; and as the courts of the United States should be brought home to the people and made as familiar to them (so far as the circumstances will permit) as are their own State courts, I believe that it is a duty which the Government owes to the people to undertake the labor of placing these statutes in convenient form, and of passing such additional laws as will protect the person and property of every law-abiding citizen, and punish those who violate the law by committing acts which are not now offenses under the statutes of the United States, but which are under the statutes of the States. It is a little peculiar that there is no law under which a person can be punished for the crime of assault with intent to kill, or assault with a dangerous or deadly weapon, committed at any place over which the United States have exclusive jurisdiction, unless such crime be committed upon the high seas, or within such other places as are within the admiralty jurisdiction of the United States, or within the Indian country; and if committed in the Indian country, such acts are only a crime if committed by a white person upon an Indian, or by an Indian upon a white person. No less singular is the fact that there is no statute which makes an attempt to commit a crime an offense punishable in the courts of the United States, outside of the statute which declares an attempt to commit murder or manslaughter an offense. No less singular is the other fact that it is not a crime to be or become an accessory before or after the fact to any crime, except piracy, robbery on the high seas, and murder, or as to acts after the fact to the offense of stealing the mail or any inclosure therein. And as to the crime of being an accessory before or after the fact to murder, it is very questionable whether the law is broad enough to justify or uphold a prosecution. The only expression of the legislative will on that subject (§ 5534) simply provides that every accessory after the fact to murder, robbery, or piracy, shall be imprisoned not more than three years and fined not more than $500. If an accessory after the fact to murder is a criminal at common law, still there is doubt as to whether the common law is in force in the United States; and if it is not, there being no declaration in the statute that being accessory after the fact to murder is a crime, it is difficult to understand how a mere denunciation as to punishment can be construed into a declaration that such an act is in fact a criminal offense. Apparently Congress was cognizant of these imperfections, for in § 5391, Revised Statutes, it is declared that if any offense be committed in any place which has been or may hereafter be ceded to and under the jurisdiction of the United States, which offense is not prohibited, or the punishment thereof is not specially provided for by any law of the United States, such offense shall be liable to and receive the same punishment as the laws of the State in which such place is situated, *now*—*i. e.*, then—*in force*, provide for the like offense when committed within the jurisdiction of such State. This undoubtedly contains a sug-

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gestion as to the kind of legislation which would remedy the defects above indicated, as well as many others which the length of time at your disposal would make it manifestly improper to point out; but the trouble about § 5391 is that not only is it limited by its terms to the laws in force at the time of its enactment, March 3, 1825, and April 5th, 1866, but it does not declare that the acts it attempts to speak of are crimes against the laws of the United States, nor that the laws of the State shall be in force in places under the exclusive jurisdiction of the United States. It has been ascertained by actual experience in this district, that the crime of assault with a deadly weapon committed at the Soldiers' Home in Leavenworth county is an offense which cannot be punished in the courts of the United States; and as jurisdiction at that point is vested exclusively in those courts, of course that offense, if committed at the Soldiers' Home, or on any military reservation, or in any public building, or at any other place under the exclusive jurisdiction of the courts of the United States, must go entirely unpunished.

Congress should at once pass a statute declaring the criminal laws of the various States, heretofore or hereafter enacted, to be in force at all places within the exclusive jurisdiction of the courts of the United States, as well as the laws of the United States now or hereafter in operation, and providing further that where the same act was denounced as a crime in both the Federal and State statute, the former should govern and control.

CRIMINAL PROCEDURE.

As to criminal procedure, the same lack of cohesion and connection is apparent. There are simply provisions as to the method of arrest and bail of offenders; of power in the court to remit the whole or a part of the penalty of a bond after the same has been forfeited; that charges for the same act or transmission may be joined in the same indictment; that defects in form in an indictment shall not affect the right to return a new indictment; a section under which a prisoner may be removed from one district to another for trial, another to the effect that a person charged with a capital offense shall be supplied with a copy of the indictment and a list of the jurors and witnesses, another specifying the number of challenges allowed the parties, and some other minor provisions not necessary to mention. Evidently in framing this so-called code of criminal procedure it was expected that Congress would pass laws adequate to the punishment of crime, for a provision is found in § 1035 that the defendant may be found guilty, not only of any offense the commission of which is necessarily included in that with which he is charged in the indictment, but that he may be found guilty of an attempt to commit the offense so charged, if such attempt be of itself a separate offense.

If a statute should be passed by Congress providing that the practice in the State courts in criminal cases, so far as the same is not inconsistent with existing provisions of the Federal law, should be adopted in the courts of the United States, it would simplify matters, point out to lawyers and laymen with certainty and distinctness what the practice is, and amply provide for every contingency in the way of the prosecution and punishment of crime which could possibly arise.

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CIVIL PRACTICE.

As to civil practice, it would seem that existing laws are sufficient so far as the equity and admiralty procedure is concerned; but in my opinion it would be a good thing, both for the courts and the people brought in contact with those courts, if Congress would pass a mandatory statute directing that all pleadings, practice and procedure, from the commencement of an action to judgment, should conform to the statutes of the State, except where Congress has specifically provided for a different proceeding. Section 914 now provides that the "practice, pleading, and forms and modes of proceeding in civil causes, other than equity and admiralty causes, shall conform, as near as may be, to the practice, pleadings, and forms and modes of proceeding existing at the time in like causes in the courts of record of the State; . . . any rule of court to the contrary notwithstanding." There is no doubt that this section had its origin in the code enactments of the States, and its purpose was to remedy the inconvenience of studying the practice in one State under both code and common law; but the construction placed upon the statute by the courts of the United States seems to be that the practice in the Federal courts shall conform to the practice in the State courts only so far as the judges see fit to permit it. As an example of this, we find that one court is not bound by the State practice as to the form of or manner in which a verdict may be returned, another that a Federal court will not enforce against a marshal a penalty given by a State law against a sheriff for similar acts, another that the practice of the Federal courts in mandamus proceedings is not substantially affected by this section, and in all of them that it does not apply to the method of charging a jury. It is clear, however, that this section could and should have been construed so that the practice in common-law cases in the Federal courts would be similar in all essential respects to the procedure in the State courts in a like case, and it is equally clear that such a construction would have been more satisfactory to the profession. The trouble with the Federal courts is, that they are looked upon by the people as something above and beyond them, that the citizen does not understand, when measuring his remedies for real or supposed wrongs, or when gauging his conduct in reference to indulging in the luxury of litigation, what he has to expect, or as to the probabilities of the result. It certainly would tend to popularize the Federal courts, and bring them nearer the people, if in the trial of an ordinary law suit the citizen knew that the same procedure would be followed, as that which he is accustomed to at home, where he frequently sees the courts and is brought into personal contact with their machinery.

CODIFICATION OF COMMERCIAL LAW.

Some years ago it was suggested at a meeting of the American Bar Association that Congress, within the commerce clause of the constitution, had the power to codify commercial law. While some question has been made as to the power of Congress in this respect, the best thought of the profession now concedes that Congress is endowed by the constitution with this power as to commercial paper made in one State and payable in another. If this be good

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law, it is certainly true that a declaration of the law of commercial paper which would apply to all parts of the country and operate alike in New York, in Kansas City, and in San Francisco, would serve a most admirable purpose. It is unnecessary and impossible to advert to the conflicts in the decisions of the various States and of the United States upon all the varying phases, and all the manifold questions, which commercial paper assumes. It is supposed, in a hazy sort of way, that there is such a thing as the "law merchant," but if one were called upon to define the meaning of that phrase and proceeded to exploit the decisions of the various courts of last resort, there is no question that he would emerge from the investigation in a very much perplexed, puzzled, and probably disgusted frame of mind.

THE CIRCUIT COURT UNNECESSARY.

Especially since the establishment of the Circuit Court of Appeals, it would seem to be proper to abolish the circuit courts, and to vest in the district courts all jurisdiction given by existing law to the circuit courts. As a matter of fact, the district judges transact at least ninety per cent. of the work of the Circuit Court; and as the circuit judges are disqualified from serving as members of the Circuit Court of Appeals in cases heard by them on the circuit, there is no reason why the district judges could not transact all the business at *nisi prius*, reserving the circuit judges for appellate service exclusively. The law requiring the circuit justice to visit the circuit to which he is assigned, once in two years, should be repealed, as it is now, of necessity, honored more frequently in the breach than in the observance. And, as the power of the district judges under existing laws is very large, and under this proposed amendment would be still more extensive, the provisions of the statute in reference to appeals should be liberalized and broadened so as to give relief against any possible unwarranted exercise of authority and power, either by the courts or judges. The idea of abolishing the circuit courts, when the Circuit Court of Appeals was established, was embodied in what is known as the Jackson bill, (many of the provisions of which are now incorporated into the act creating the Circuit Court of Appeals,) and so eminent an authority as the late Mr. Justice Stanley Matthews gave it his indorsement. And as the judges of an appellate court ought not to be endowed or incumbered with any other duty, except in particular cases, and as the abolishment of unnecessary courts, such as the Circuit Court now is, would be in the direction of simplification and reduction of complexity, the arguments in its favor appear to be unanswerable. Further than this, it would materially reduce the expenses of the courts by decreasing the number of terms and the number of juries. In this district there would be two less terms of court per year, and in many other districts the same economy would be effected.*

THE FEE SYSTEM.

The fee system under which Federal officials are paid has been so repeatedly

* Since the above was written, I notice in the published proceedings of the American Bar Association that the same view is entertained and urged by one of the leading committees of that organization.

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and so unanimously denounced as to make any observations on the subject altogether unnecessary, except to call attention to the existing condition of things. Laws relating to the compensation of these officers, enacted at a time when there were no railroads, or hardly any; when there were no means of communication between distant points better than the stage-coach or steamboat; and statutes passed when no idea could be formed as to the development of the country, or as to the business which would be intrusted to the Federal courts, are still in force, and govern and control the compensation of the officers of the Federal courts. Almost every Attorney General within the past twenty years has denounced the system, and has appealed to Congress to remedy it. The Presidents, year after year, have strenuously urged the repeal of the fee system, but somehow Congress has turned a deaf ear to all these requests. There is no doubt that a law which makes the compensation (of a prosecuting officer, for example) depend almost exclusively upon the number of prosecutions which he institutes, and the number of convictions which he secures, is vicious and injurious to the officer and citizen alike. No man has such full control of the unconscious operations of his own mind, and no man is so above the effect of considerations which go directly to the compensation which he is to receive for his labor, as to be entirely uninfluenced by them. A prosecuting officer, of all men, should be exempt from this system of statutory bribery. It is not the duty of a prosecutor to harass the citizen with unnecessary or unfounded criminal charges, and his mind at the time of the institution of a prosecution should be impartial, calm, and judicial; and not only should he view with the utmost circumspection the facts laid before him as the basis for the prosecution, but even after the prosecution is commenced his duty should not consist in the zealous, enthusiastic and partisan presentation of fact and argument usually expected from an attorney in a private litigation, but his efforts should be focused in the direction of aiding the court in administering the law in a fair, just and impersonal manner.

It would be improper in a paper such as this to enter into a discussion as to the propriety of the passage of various statutes over the subject-matter of which Congress is granted, by the Constitution, exclusive power. It has been my aim simply to call attention to matters connected directly with the courts, with the practice of such courts, and to matters affecting the officers of such courts. While lawyers are interested in all laws, yet the attention of the bar association is more properly directed to the adoption and construction of the comparatively few statutes which affect the administration of the general bulk of the law by the courts, and the means and methods by which justice is administered and the controversies of mankind disposed of.

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The Supreme Court. . . . .

By D. M. VALENTINE.

Mr. President, and Gentlemen of the State Bar Association:

The subject of this address is the Supreme Court of Kansas. This will include both the Territorial and the State Supreme Courts. But what I shall say with respect to these courts, or their judges, will, in comparison with all that might be said respecting them, be very brief.

On May 30, 1854, the act of Congress for the organization of Kansas and Nebraska as Territories was passed. With respect to Kansas the act provided among other things as follows: "That the judicial power of said Territory shall be vested in a Supreme Court, district courts, probate courts, and justices of the peace." The Supreme Court was to consist of a Chief Justice and two Associate Justices, and terms of that court were to be held annually at the capital. The Territory was also to be, and afterward was, divided into three judicial districts, in each of which a district court was to be held, and afterward was held, by one of the Justices of the Supreme Court.

The Supreme Court of the Territory was first organized on July 30, 1855, but no case was called for hearing until in January, 1857. On January 29, 1861, the State was admitted into the Union, and the duties of the Territorial Supreme Court then ceased. At that time only seventy-five cases had been filed in the Supreme Court. As to how many of them had been decided I am not informed, further than that twenty-eight of them had been decided and have since been reported in McCahon's Report. Probably still others had been decided, but no written opinions delivered therein.

The first judges of the Territorial Supreme Court were Samuel D. Lecompte, Chief Justice, and Sanders W. Johnston and Rush Elmore, Associate Justices. The only successor of the Chief Justice was John Pettit. The successors of the other two Justices were Jeremiah M. Burrell, Sterling G. Cato, Thomas Cunningham, and Joseph Williams. A reporter was appointed for the Supreme Court, but it does not appear that he ever did anything in the way of reporting. McCahon's Report of the Territorial Supreme Court decisions was a purely private enterprise. It was first published in 1870. The most of the Territorial Supreme Court judges are known to be dead, and whether any of them are still living I am not informed.

The State Supreme Court was organized on October 28, 1861, but no case was called for hearing until January 9, 1862, when the first case submitted to the court was that of *The State, ex rel. Crawford, v. Robinson.* Under the provisions of the schedule to the Constitution, (§§ 7, 8,) and of the Act of Admission and of the other statutes then in force, all cases pending in the Territorial Supreme Court at the date of the admission of the State were transferred to the State Supreme Court for final disposition.

The first judges of the State Supreme Court were Thomas Ewing, Chief Justice, and Lawrence D. Bailey and Samuel A. Kingman, Associate Justices.

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The successors of the Chief Justice have been Nelson Cobb, Robert Crozier, Samuel A. Kingman, and Albert H. Horton. The successors of Associate Justice Bailey have been Daniel M. Valentine and Stephen H. Allen. The successors of Associate Justice Kingman have been Jacob Safford, David J. Brewer, Theodore A. Hurd, and William A. Johnston. All the foregoing justices are still living except two—Bailey and Safford.

There have also been Commissioners of the Supreme Court as follows: From March 5, 1887, to March 1, 1890, B. F. Simpson, J. B. Clogston, and Joel Holt; from March 1, 1890, to March 1, 1893, B. F. Simpson, George S. Green, and J. C. Strang. All the Commissioners are still living except Holt.

The Clerks of the State Supreme Court have been Andrew Stark, E. B. Fowler, Abram Hammatt, and C. J. Brown.

The Reporters have been P. B. Plumb, Louis Carpenter, Elliot V. Banks, W. C. Webb, and A. M. F. Randolph, the first two of whom never did anything in the way of reporting.

The first case filed in the State Supreme Court was filed on February 25, 1861, and was numbered seventy-six; seventy-five cases having previously been filed in the Territorial Supreme Court. The cases filed in the State Supreme Court have been in numbers, during each year, as follows:

1861	3	1870	120	1879	255	1888	699
1862	41	1871	190	1880	298	1889	736
1863	50	1872	184	1881	327	1890	892
1864	50	1873	254	1882	327	1891	788
1865	44	1874	276	1883	338	1892	766
1866	40	1875	283	1884	396	1893	661
1867	37	1876	248	1885	379	1894	626
1868	74	1877	262	1886	456		
1869	106	1878	256	1887	585	Total	11,047

The whole number of cases filed in the Supreme Court prior to January 1, 1895, has been as follows:

In the Territorial Supreme Court	75
In the State Supreme Court	11,047
Total	11,122

The cases as numbered at the present time show 1,000 less than have actually been filed. In December, 1872, after the first one thousand cases had been filed, Mr. Hammatt, who was then the Clerk of the Supreme Court, commenced again to number the cases from No. 1, and they have been so numbered consecutively ever since.

Of the reported cases decided by the Territorial and State Supreme Courts, the judges have delivered opinions as follows:

Lecompte	2	Kingman	220	Brewer	1,023
Elmore	6	Cobb	15	Horton	1,317
Pettit	11	Crozier	47	Hurd	26
Williams	9	Safford	84	Johnston	615
Ewing	9	Valentine	1,572	Allen	144
Bailey	44				

Many concurring, dissenting and *per curiam* opinions not included in the

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above have also been delivered by each of the several judges in about the above proportions.

The Commissioners of the Supreme Court delivered opinions as follows:

Simpson	324	Green	184
Clogston	161	Strang	177
Holt	163		

The total number of reported opinions of all the judges and the commissioners contained in McCahon's Report and in 53 volumes of the State Supreme Court Reports is 6,163. This number does not include any of the concurring, dissenting, or *per curiam* opinions. More cases have been decided than this number indicates. Several of the recently decided cases have not yet been reported. Sometimes, also, one opinion has been made to answer for two or more cases, and many cases have been decided in which *per curiam* opinions only were filed. Sometimes, also, cases have been dismissed by the parties or by the court for want of prosecution or otherwise, in which no opinion was filed and no report made. The court, however, has not decided nearly all the cases filed in the court. The court may be said to be four years behind. The last case regularly called in its order on the January docket, January 3, 1895, was No. 7361, and was filed in the Supreme Court on January 30, 1891. But while the Supreme Court is substantially four years behind for cases filed four years ago, it may be considered as much further behind (if no help shall be hereafter furnished) for cases filed later. The court has had no help since March 1, 1893. The first case on the regular March call of the docket for that year was No. 6685. The first case on the regular March call of the docket in 1895 is No. 7387. It will therefore be seen that in these two years the advancement by the court on the docket has been 702 cases, or at the rate of 351 cases a year. Now the last case on the regular call of the January docket, January 3, 1895, was No. 7361. At the time when that case was called for hearing the number of the last case filed was 10129. Or in other words, between the last case called and the last case filed there were 2,768 cases. Now let the court in the future advance on the docket just the same as it has for the last two years, and it will take more than seven, nearly eight, years for the court to reach the case which was filed on January 3, 1895.

It is no fault of the court, however, that it has got so very far behind. All the judges are industrious, and do as much work as could reasonably be expected from any three judges. If they should advance any more rapidly with the docket than they are doing, it might be at the expense of justice. Of course this great delay is unfortunate. In many cases it is equivalent to a denial of justice. And in all cases it works a great hardship to at least one side. Indeed, the natural consequences of so great a delay in the administration of justice in any country, or anywhere, are pernicious to society itself. Discontent is engendered, and the peace, quiet and good order of society are greatly imperiled. The people of Kansas have certainly been very derelict in duty in not furnishing sufficient facilities for the speedy disposition of cases in the Supreme Court. Some remedy for this great evil should speedily be found. This condition of things, however, did not come unexpectedly to intelligent and well-informed

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men. They all expected it. They knew that it must come unless some remedy should be interposed, and many of them deplored it and tried to prevent it. But the insolvent corporations of the State, and the insolvent individuals who had purchased farms and town property on credit and who wanted delay in the administration of justice, welcomed it. There will probably be no use to attempt to increase the number of the judges of the Supreme Court, or to reorganize the judiciary, for all this would require an amendment to the constitution, which, from former experiences, we know cannot easily be obtained. But possibly after all the debts of all the insolvent and financially embarrassed corporations and individuals have been largely adjusted and extinguished, something good may be hoped for.

I do not believe that the proper remedy for the present delay is a further limitation upon the right of parties to appeal from the district courts to the Supreme Court. The present limitation to only such cases as exceed $100 in amount (with some exceptions), is as far as limitation should go.

If the records of cases taken to the Supreme Court could be reduced in size, that would furnish some relief; but while that would be difficult to accomplish, yet even that, if it were practicable, would not come anywhere near furnishing adequate relief.

I have heard it suggested that the judges of the Supreme Court might be relieved from writing opinions. This would be a most unfortunate remedy. The peace, quiet and good order of society, as well as justice itself, demand that a full opportunity shall be given to every litigant in a court of justice of last resort to know upon what grounds the decision of his case has been rendered. Even now courts of last resort are sometimes criticised, very often unjustly, but it would be worse if the courts should cease to make known in writing the grounds of their decisions. In such a case the great confidence now reposed in the courts would greatly diminish.

Probably the only available remedy at this time is an appellate court or courts; and an appellate court should be suffered to come into existence only because there is no other or better remedy immediately available.

The Legislature has the power to create other and additional courts, but only "other courts *inferior* to the Supreme Court." (Const., Art. 3, Sec. 1.) I do not understand that in order that such other courts shall be inferior to the Supreme Court there must necessarily be an appeal or petition in error given to every litigant in every case, or indeed to any litigant in any case, from the new court to the Supreme Court. But the Supreme Court in all cases should in some manner have the power of supervision over all the decisions of the new court or courts, as by *certiorari* or some kindred writ or proceeding. This would render the new court inferior to the Supreme Court. While a court or courts of appeals would not be as beneficial or as satisfactory as a larger and differently organized Supreme Court, like that of California or Missouri, would be, yet, as we can probably get the former and probably not the latter, we should take the former.

Perhaps I should now say something with regard to the mode of procedure in the Supreme Court.

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The court meets on the first Tuesday of each month except August, and generally continues in session during the week. The docket for each month is made up about two months in advance, and the court assigns for hearing about as many cases as it thinks it can dispose of during the month. At the time of the submission of any case to the court a printed brief for each judge is required from the plaintiff in error; and the defendant in error may also present a printed brief; and then as a rule the court will consider only such questions as are presented in the printed briefs. One hour is also given to each side for oral argument. Generally I think it is best, whenever convenient, for counsel to avail themselves of this right to argue their cases orally; and yet in the great majority of the cases submitted to the court but little if anything is lost to the parties by a failure to make an oral argument. The briefs are really the important things in the submission of cases. Briefs are not required on the hearing or submission of motions, but even then I think it would be better for each side to present a brief fully covering every question or point intended to be submitted to the court. After the cases are submitted to the court they are then assigned to the several judges for particular examination. These assignments follow arbitrarily and in rotation, but the complications are such that no judge at the time of the submission of the cases or prior thereto can know what case or cases will come to him. And following this mode of assignment, it sometimes happens that a dissenting judge prepares the opinion and syllabus for the court. After the assignment each judge then commences the examination of the particular cases assigned to him. The court also assigns particular days for consultation by all the judges together upon the cases examined by the judges separately, usually beginning on Wednesday of each week. Of course all the judges hear the oral arguments; all read the briefs of counsel; and the judge to whom the case is specially assigned reads the record and examines the authorities. And as to how much of the record and how many of the authorities the other two judges will read or examine, are matters generally determined in the consultation-room. The record and the principal authorities are generally brought into the consultation-room, to be ready for examination. From this consultation each judge knows pretty well what each case examined is, and the opinion of each judge thereon. The consultation upon any particular case is always had before any written opinion is prepared. The judge to whom the case is assigned prepares the opinion and the syllabus. The other judges then read the same and make such suggestions or comments as they may deem proper. If it is thought necessary to make any amendments or changes, the same are then made, and then the opinion and the syllabus are ready for filing. After the same are filed and the decision made, any party feeling aggrieved may at any time within thirty days file a motion for a rehearing, and on that motion each party may file a brief and make an oral argument not exceeding one-half hour in length. The court is always glad to correct any mistake or error which it may have committed, but generally the difficult thing to do is to convince the court that it has committed any mistake or error.

Probably it might be proper to here advert to some of the general principles upon which all courts of last resort generally decide cases. It is the general

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intention of every court of last resort to decide every question presented to it necessary for the final disposition of the case in both the higher and the lower court, and generally not to decide any others. It is often, however, not necessary to decide all the questions presented by counsel, or even every question involved in the case. It is often found that some of the alleged errors have not been properly saved; that some of them have been waived by the action or non-action of the parties presenting them; that some of them have been cured by something occurring afterward; that some of them are harmless or immaterial; and that some of them are rendered immaterial by the decision of the court of some other question involved in the case. Of course the court decides only such questions as are involved in the case, and generally only such as must necessarily be decided in order to properly dispose of the case, and only such as are presented by counsel. In the decision of cases all courts of last resort, as well as other courts, attempt to follow established law. Indeed, no honest judge would ever think of deciding a case contrary to established law. And it makes no difference how the law has been established, whether by the constitution of the State or the United States, or by statutes, or treaties, or municipal ordinances, or judicial decisions, or even by the declarations of universally recognized authors on law. The last two are simply a portion of the common law, or common law and other law combined. When the law is established, it must be followed. But difficulties often arise. Established law does not always reach to all the details of any particular case. But whether it does or not, the case must be decided. The courts, then, in deciding the case, follow the analogies and implications of established law as far as it is possible. But the analogies and implications of established law do not always reach far enough to cover all the questions which actually come before the courts for adjudication. Then what is to be done? Unless a mistake has been made by one party or the other, the case must be decided upon its merits, and all the essential questions involved therein must be decided. There can be no question, actually involved in a case, so difficult that the courts are at liberty to ignore it. When established law and its analogies and implications do not reach to all the questions involved in a case, then the courts go further in the same general lines, endeavoring to accomplish what they believe to be the great end and object of all law — that is, the promotion of justice; and in doing this, they resort to what they believe to be the broad principles of natural justice. This is common law, or rather a part of the common law. While much of the common law has been ascertained, settled and established by legislation and judicial determinations, yet there still remains a vast amount of unexplored territory, much of the common law which has not yet been settled or established. And this must always be so. The complications of human affairs are so limitless in number and so varied in character that their full details or their exact boundaries can never be fully settled, or even known or discovered. But more and more are being discovered every day. This kind of common law which we are now considering is simply natural justice or natural right founded in the natural order and condition of things, but not yet established by legislation or by the adjudications of courts as law. The general questions to be considered

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when we enter the domain of this kind of common law are: What is right for the particular case, and what would generally be right as a rule or precedent for future cases of a similar character? These are not simple or elementary questions, to be solved by ignorant or uneducated men. The principles of right, duty, obligation, and natural justice, being founded in nature and in the existing order and condition of things, can be intelligently determined only by persons possessing vast information concerning all these things. To know what is established law with all its analogies and implications, and how to properly apply it, of course requires great learning, information, experience, and ability; but after getting beyond the boundaries of established law and into an unexplored region, then to know what the law is or ought to be and how to properly apply it, requires at least an equal amount of learning, information, experience, and ability. I shall not attempt in this address to analyze the principles of right, duty, obligation, or justice, or to give their elements, further than to say that they must be considered as founded in nature, including human nature, as the same exists, and with reference to human affairs, human conduct, and the condition of things as they actually take place, and need not at all agree with the whims of self-constituted reformers or egotistical pretenders, who often imagine or wish, and act as though they believed, that the course of nature, and especially human nature, were vastly different from what either in fact actually is or ever has been.

The foregoing suggestions as to the proper mode for courts of last resort to follow in the examination and decision of cases are not mere suggestions. They are in substance exact statements of what courts of last resort generally do, and of what the Supreme Court of Kansas has actually and in fact been doing (with rare exceptions) from the beginning; and I do not believe that the Supreme Court of Kansas will ever depart from this mode.

Combinations in Restraint of Trade.

By D. W. EATON.

In the contemplation of this question we are brought face to face with an evil of modern yet colossal growth, which threatens industry and commerce with disaster. Whatever our political views may be, we must admit its dangerous tendencies, and we should not, in charging its maintenance to our political opponents, forget that whatever our sympathies may be, we owe it to our countrymen, and to the industry and civilization which characterize our country, to do all in our power to put down the trust and combination, as to whose ruinous effects there can be no doubt.

Much might be said of the political aspect of this question, but it is greatly preferable that that side of the question be left to those whose business it is to instruct the masses, for whom they always feel so much solicitude, in eco-

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nomics, and who have always so ably and vehemently charged others with practices as to which they fear to probe their own consciences.

It is certain that the right of the consumer to the benefits of competition is one which inheres in our idea of freedom and liberty, and one who by any method seeks to destroy that competition and control prices of commodities in such a way as will most redound to his own profit, is guilty of a crime against the public of which courts and legislatures will take notice; and in the interest of the public he should be restrained from so doing. This is a question which has only recently been brought to the attention of our courts and legislatures, and while the subject is yet young, it shows a remarkable development, and if the laws in force were to be enforced in the spirit, it is safe to say that the practice would stop.

The failure of the laws to have the effect intended may be attributed to a common trait of human nature, that when an individual has for some time enjoyed a privilege, and has reaped therefrom a rich harvest, it is very difficult indeed to persuade him that for the good of his fellow-men and the advancement of correct business policy he should forbear to use that privilege longer; and the result of this natural resistance is very plainly to be seen in some of the lobbying that is going on. Money is a subtle power, and its influence is seldom realized until it comes to a decision between money and conscience, and too often money is the choice. Certain it is, that the trusts will spend a great deal of money to secure favorable legislation and decision, and they call into play all the genius of our best lawyers in their efforts to overthrow or escape laws passed for their government.

The combination in the sense in which it appears before us to-day is a creation of modern times; it seems to have sprung up with the building of great manufacturing concerns. Smaller dealers always sought to sell rather upon merit and worth, than by making the larger part of their capital from the needs of others. It never occurred to them that they could command better prices for their goods by combining and refusing to make them for less. If it had, it would have been put away as one of those desirable yet unattainable things which met them everywhere, but which to us are growing decidedly fewer. But when larger concerns arose through the aggregation of capital under corporations, then the idea was pushed, until now it is part of the business of manufacture to be able to say at what price goods of the same kind turned out by other institutions shall sell. The larger concerns, by the use of improved machinery and cheap labor, have been able to drive small competitors from the field, or so undersell them as to make their business unprofitable. This sort of competition must meet favor with the law; for it is a public good that an article which was formerly expensive should be brought within the reach of all. It is the height of folly to attribute this result to any political policy: it is simply the march of improvement.

What cannot be bought with money at the present time amounts to little from a business standpoint, and trusts do not hesitate to use the receipts of their schemes in purchasing consciences; and even statesmen fall under their influence, but most of them have paid for the sweetness with disgrace. The adage,

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that it is a weakness to trust in the faults of an adversary, does not obtain to any great extent in this case; the weakness of legislators is capital for the trust, and is as much the subject of investment as machinery or material. It has been said that the evils arising from combinations are attributable to some one's lack of scruple, and that they are not the primary results of the combination itself; but how strange it is that men will strive so earnestly for positions in which good men before them have become as they say unscrupulous, and how their views will change when they get them! It puts matters in a very different light. It is very hard to see the difference between what is known as business policy, and unfair dealing, when one is more profitable than the other. One man is not a great improvement of another when put under the same circumstances.

In the discussion of this question, we must not forget that one of the essentials of the combination in order to make it amenable to law, is its effect on trade, or competition. There are many things which are of too large a character to be undertaken by an individual; often the undertaking is one for the good of the public, and a combination of forces and capital is necessary to bring it about — and such combinations must be favored. Long ago it was decided in England that an association of merchants for the purpose of carrying on trade with India was a legal combination, and that although they practically had control of the prices of the goods they shipped into England, it was a benefit to the public to encourage such trade. (*East India Co. v. Sandys*, 10 How. St. Tr. 1071.) But courts have been very loth to give even this latitude to business combinations, and whenever there is the appearance of monopoly it will be very closely examined, and decision based on the broad ground of public policy. It is very doubtful whether in this age of great concerns, any court would follow the doctrine laid down in the case above cited; they certainly would not give any company a monopoly of such trade.

In the United States, legislatures have been very slow to take any action in regard to this matter, and only very recently have any laws been passed for its government. The act of Congress bearing on the question, and which seems to be the embodiment of the doctrine, was approved July 2d, 1890, and the first two sections of the act, those containing the enacting part, are as follows:

"SECTION 1. Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make such contract or engage in any such combination or conspiracy shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

"SEC. 2. Every person who shall monopolize or attempt to monopolize, or combine or conspire with any other person or persons to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

Of the intention of the statute there can be no question, and courts have been very careful to preserve the purpose of the legislature whenever the law has come to their attention.

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It may be stated as a general proposition of law, that anything, whether contract or combination, which tends to stifle competition, is contrary to public policy and in restraint of trade, and therefore unlawful. (*People v. Chicago Gas Trust Co.*, 19 Am. St. Rep. 319; *Richardson v. Buell*, 77 Mich. 633; Addison on Contracts, vol. 2, p. 743; *Morris Run Coal Co. v. Barclay Coal Co.*, 68 Pa. St. 173; *Central Shade Roller Co. v. Cushman*, 143 Mass. 353; *T. & P. R. R. Co. v. S. P. R. R. Co.*, 41 La. Ann. 970; same case, 17 Am. St. Rep. 445; *Hooker v. Vandewater*, 4 Denio, 349; same case, 47 Am. Dec. 258; *Craft v. McConoughy*, 79 Ill. 346; same case, 22 Am. Rep. 171; *S. C. V. M. & L. Co. v. Hayes*, 76 Cal. 387; same case, 9 Am. St. Rep. 211; *Crawford v. Wick*, 10 Ohio St. 190; same case, 98 Am. Dec. 103; *In re Pinkney*, 47 Kas. 89; *State v. Phipps*, 50 Kas. 609.)

It is a violation of law for either mercantile manufacturing concerns or dealers to form a combination for the purpose of controlling prices. (*Gould v. Head*, 38 Fed. 886.)

It must not be supposed that combinations of capital are the only combinations in restraint of trade which fall under the scope of the law. Combinations of labor have just as appreciable an effect upon trade and commerce as combinations of capital, and are none the less evil when they interfere with business activity. The law in regard to combinations of labor may be stated to be that when a labor organization, by force, threats, or otherwise, causes trade or commerce to be stopped or stagnated in any particular line of business or in any particular locality, then it falls within the law, and courts will decree it unlawful and against public policy. (*U. S. v. Workingmen's Amalgamated Assn.*, 54 Fed. 994.) Labor organizations are formed with the idea of securing the employment of their members; at least this is their chief object. To a certain extent, labor organizations are healthful, but when in their efforts to control employment they cause business to stop, they will be restrained. Another of the objects of labor organizations is the maintenance of a standard of wages. There is no law to compel a man to work for any wages, but he owes it to law and order to refrain from interfering with anyone else who will work for those wages. The law gives to no organization of labor a monopoly of work, any more than it will create or encourage a monopoly of trade or manufacture. (*U. S. v. Workingmen's Amalgamated Assn.*, id.) In the case of *People v. Fisher*, 14 Wend. 18, a very early authority on this subject, Chief Justice Savage very ably defines restraint of trade as follows:

"A mechanic is not obliged by law to labor for any particular price; he may say that he will not make coarse boots for less than one dollar per pair, but he has no right to say that no other mechanic will make them for less. Should the journeymen bakers refuse to work unless for enormous wages, which the master bakers could not afford to pay, and should they compel all journeymen in the city to stop work, the whole population must be without bread. So of journeymen tailors, or mechanics of any description. Such combinations would be productive of derangement and confusion which certainly must be injurious to trade."

The weight of authority is that in order to bring the combination of capital under the law, it must be shown that one of the purposes for which it is formed is that of controlling prices or destroying competition. (*U. S. v. Trans-Mo. Ft.*

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Assn., 53 Fed. 440, and cases cited.) In the case just cited it was held that a combination of competing railway companies for the purpose of mutual protection, and for the maintenance of *reasonable* freight rates, was legal, and was not intended to be covered by the statute above quoted. The court did not attempt to say what a reasonable freight rate was, but left that to usage and custom; but the standard is as it always has been, just what the companies themselves think is reasonable, and this case has been much criticized for its apparent departure from the intention of the statute.

In contradiction of the doctrine laid down in the case last cited, see *T. & P. R. R. Co. v. S. P. R. R. Co.*, 6 So. Rep. 888, which will be referred to more fully hereafter.

As it is of laborers, so is it of tradesmen: a mercantile dealer is not bound to sell his goods for any particular price, but if he interferes with the right of any other dealer to sell them for less, he violates the law. (*People v. Fisher*, 14 Wend. 18.)

As a proposition of law, corporations cannot enter into a partnership, it being deemed contrary to public policy that the public should be deprived of the benefit of the competition between them. (*N. Y. & S. C. Co. v. F. Bank*, 7 Wend. 412; *Clearwater v. Merydith*, 1 Wall. 29; *Whitten Mills v. Upton*, 10 Gray, 596.) But in New York it has been held that one manufacturer has a right to entirely buy in the business of another for the very purpose of preventing competition. It is very doubtful to what extent this doctrine would be carried. It certainly is a dangerous principle. (*Diamond Match Co. v. Roeber*, 106 N. Y. 473.)

The second section of the United States statute quoted forbids monopolies, and the effect of the decisions may be stated to be that all agreements tending to monopoly are void. (*People v. Stephens*, 71 N. Y. 545; *Raymond v. Leavitt*, 46 Mich. 447; *Croft v. McConoughy*, 79 Ill. 339; *S. Co. v. Guthrie*, 35 O. St. 672; *Co. Co. v. C. Co.*, 68 Pa. St. 182; *Arnott v. Coal Co.*, 68 N. Y. 559; *Leonard v. Poole*, 114 N. Y. 371; *People v. C. G. Trust Co.*, 41 Albany L. J. 68.)

The penalty of the courts for combination in restraint of trade is the forfeiture of the charter of the offending corporation. The forfeiture of the charter of a corporation is a serious thing. While it is less than the life of the humblest citizen, yet it may involve enormous business interests which would be lost thereby, and courts have required good cause to be shown before decreeing a forfeiture. But in *People v. N. S. R. Co.*, 121 N. Y. 582, it was held that an attempt at combination for the purpose of preventing competition was sufficient cause for forfeiture. This case is a very strong one. It seems to get at the transaction from all sides, and the reasons for action, *pro* and *con*, are well stated; the authorities bearing on the question were all brought together, and the opinion is certainly a valuable one.

Let us consider for a moment the law of our own State regarding this subject. It is true that Kansas has the most vigorous statute upon this question to be found anywhere. By chapter 257, Laws of 1889, it was provided, in substance, that every combination between persons or corporations made with a

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view of preventing full and free competition in any line of business or in any vocation or calling whatsoever, or for the transportation of goods, the loaning of money, or for professional services, or any contract which tends to "control, reduce or advance" the price of the product to the consumer, to control the cost of insurance, or for any service, is hereby declared illegal and void; and the statute provides that anyone convicted of the offense shall be deemed guilty of a misdemeanor, and provides a punishment by fine or imprisonment.

The first attempt to break the force of this statute was made by a combination of insurance agents who sought to control rates of insurance. The point raised by them was that the word "trade," used in the title to the act, did not properly include the business of writing insurance. The Supreme Court held that the business of writing insurance was properly styled a trade, and intimated very strongly that in the eyes of the court, lawyers and doctors would be held to be tradesmen. The decision was reached after a full examination of the definitions given by the dictionaries, and seems to be well advised. However, Chief Justice Horton dissented to this, and gave it as his opinion that the word did not include the business of writing insurance, or that of lawyers and doctors. But the opinion in the case seems to intimate that the court is satisfied that the word "trade" means and includes everything which follows in the act. (*In re Pinkney*, 47 Kas. 89.)

But in a later case in the same court it was held that the word "trade" did not include inter-state commerce, and that it was not the intention of the court, in deciding the first case, to include it. But they held that insurance was not inter-state commerce; and to this Judge Horton dissented. (*State v. Phipps*, 50 Kas. 609.)

These two decisions represent the law of Kansas, and Kansas is without doubt a cold place for combinations. It will be observed that while in most States one of the elements of the combination must be the intention to control or raise prices, the Kansas statute expressly forbids the reduction of prices as an object of the combination: the very idea of combination seems to be distasteful to the spirit of the act.

The law of New York is well settled that whatever tends to regulate prices, or stifle competition, is unlawful, and contrary to public policy; and it has been held that one participant in a combination for that purpose cannot recover his share of the proceeds of the act in case his co-conspirators refuse to divide. (*Strait v. Nat. Harrow Co.*, 18 N. Y. S. 224; *De Witt W. C. Co. v. N. J. W. C. Co.*, 14 N. Y. S. 277.)

In the case of *People v. North River Sugar Refining Company*, 121 N. Y. 582, the question is very thoroughly discussed; and the case is a particularly valuable one because of its citations. The action was brought to declare the charter of the North River Sugar Refining Company forfeited, for the reason that the company had combined with a great number of other companies for the purpose of mutual protection. Each stockholder received for his shares in the original concern shares in the new organization, over which a certain board of managers was to have absolute control, and if necessary had power to stop the operation of any mill belonging to the combination for the purpose of con-

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trolling the output, and stockholders owning stock in the mill thus closed would receive their dividends at the same rate as those owning stock in mills which were running. The court, while recognizing the fact that grave cause must be shown for the forfeiture of a charter, held that the charter of this company should be forfeited. The result of this decision was that the sugar trust was driven out of New York; but, nothing daunted, they sought a better and more favorable location, on the *sandy* plains of New Jersey, and there their organization still exists.

Combinations are unlawful in Louisiana, for the reason that the organization of unincorporated joint-stock companies is forbidden by statute in that State. The rule as to restraint of trade is the same as in most of the other States: that whatever tends in that direction is unlawful and void. It is held that two railway companies each operating a separate and distinct line of railway between two points, are competing carriers, and that a combination between them to control rates of transportation and divide earnings is against public policy, and void. (*T. & P. R. R. Co. v. S. R. R. Co.*, 6 So. Rep. 888; *La. v. Am. Cotton Oil Trust*, 1 Ry. & Corp. L. J. 509; *Assn. v. Kock*, 14 La. Ann. 168; *Glusscock v. Wells*, 2 La. Ann. 517; *Cummings v. Sanx*, 30 La. Ann. 207.)

Texas stands in a rather curious position on this question. The statute of that State concerning this subject has been pronounced by its Supreme Court to be a very good definition of a trust, but the statute fails to provide any penalty for the offense defined, and on that account is not of a great deal of force. The statute gives a very good idea of the impropriety of the trust and combination, but is no remedy; as a work of art and a masterpiece of legal definition it is an overwhelming success, but as a statute for the guidance of men it is a failure. Men are not so unselfish that the suggestion to them of the evil of their ways will lead them to desist and pursue the proper path when the wrong one is very profitable.

Viewed from its economic side, the combination appears much more of an evil. It certainly does not indicate the condition of civilization and freedom of which America boasts, that the matter of the prices of necessaries is in the power of a being with no soul, and no idea save of gain and self-advancement. The sugar trust is no credit to the United States, nor is any organization for the purpose of controlling markets. Organizations of capital are necessary for the accomplishment of the great undertakings which are a characteristic of modern times, but the controlling of competition and markets is not an object to which the capital should be applied. Often the control of the markets for articles of commerce is in others than those who produce them, and for this reason the party who should receive the benefit of higher markets is not the one who profits by them. It is a matter of justice that a jobber should receive some compensation for his services, being, as he is, the means of bringing the producing and consuming elements together, but it is not justice that his profit should equal or exceed that of the producer. There is a great deal more wisdom than we think in the so-called "calamity howl" of the producing classes at this injustice. It is not to be expected that capitalists will risk their earn-

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ings and perhaps their principal for nothing, but it is not expected that by the use of it they will become tyrannical in their conduct towards the laborer and producer. No one can ask that a manufacturer furnish his product for less than it cost him, but he certainly has no right to ask that no other person sell the same article for less money. To grant him this would be a violation of one of the commonest principles of justice.

We must give the manufacturing concerns credit for the part they play in the development of a nation, and while it is a large share of the credit, they must not be allowed to manage the Government. It certainly would not be conducted in the interest of the people who compose the state.

It is a dangerous practice to put any man where he must choose between his own interests and those of his fellow-men: he seldom chooses to benefit his neighbor. Selfishness is a characteristic of modern business ability, and is always excused on that ground.

Trusts are powerful things politically, and while not franchised voters, it is surprising the number of votes they control; and as long as there are citizens who, while loudly clamoring for the right of citizenship, will sell it, so long will the power of the trust continue. It seems to be a part of the business of the combination to control politics, and lobbyists are their highest salaried officers. Greed for gold attacks even our statesmen. The purchasing power of money is greater than ever before. Money will buy friendship and honor, and riches seem to be the standard of greatness.

There is only one standard of action to which we can look for guidance in our effort to rid our country of this curse, and that, while much abused, is the true foundation of all business and moral codes, and should be the groundwork of our government: "Thou shalt love thy neighbor as thyself."

President's Annual Address.

By JOHN D. MILLIKEN.

Members of the Bar Association:

Another revolution of the cycle of time has brought the members of this Association together in its twelfth annual session under the most auspicious conditions. The large attendance of the profession from every section of this vast commonwealth, as well as the many others present, is an expression of the deep interest manifested in our body; although I am conscious that a potent factor in swelling our numbers, adding to the profit and pleasure, and intensifying the interest of the occasion, is the presence of that most illustrious citizen of our beloved State, whom we all delight to honor, our distinguished guest, Mr. Justice Brewer.

Our constitution affords the privilege to and imposes the duty upon the President to open each annual meeting with an appropriate address. I have

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thought I could do so most acceptably by discussing some of the great questions so closely allied to the legal profession which it must be such a potent factor in solving, in the sublime process of building our governmental structure.

RELIEF OF THE SUPREME COURT.

First, I shall briefly allude to some matters affecting State affairs; and a session of this Association would scarceful be lawful, and it would certainly be incomplete, without some reference to the threadbare subject of the wrongful and shameful neglect of our legislators in providing facilities for transacting the business of the Supreme Court. At each session of this body some member has heroically presented, in more or less detail, the fact that three judges cannot possibly perform the work of that body; that there is an accumulation of hundreds of cases; and that the business is four or five years in arrears, and that month by month it becomes further behind. With one voice we resolve that relief should be afforded—and there our efforts cease. Some member of the Legislature introduces a bill at each recurring session, which gives way to the more important (?) public (?) business of vacating the streets and alleys of some addition to a hamlet on the frontier, or changing the boundary-line of some township, or removing the political disabilities of some disfranchised individual. Meanwhile, the rights of the rich and poor alike are undetermined, and irreparable wrong is perpetrated, and the constitutional provision that "all persons, for injuries suffered in person, reputation, or property, shall have remedy by due course of law, and justice administered without delay," adorns our statute book as a meaningless but high-sounding phrase. At our last meeting a special committee was appointed to take action in this matter, and it has formulated a plan which will be presented for your action; and it is the duty of this Association, individually and collectively, to bombard the present Legislature until it becomes aroused to the necessity of enacting the proposed law, or some other that will afford relief.

DIVORCEMENT OF CHARITABLE AND PENAL INSTITUTIONS FROM POLITICS.

Another matter that I think should enlist the influence of every member of the legal profession, is the enactment of laws divorcing the management of our charitable and educational institutions from politics. The flagrant instances of unfitness and incompetency of the appointees, the numerous cases wherein the holders of these responsible positions have been actuated more by the effect their actions would have on political affairs than how they would advance the interests of the sacred trusts committed to them, have been detrimental to the best interests of our State, and have been a crime against the helpless victims of a system that not only makes such things possible, but necessary. So long as these positions are reckoned as political benefactions to be bestowed in consideration of political services or party fealty, so long must the appointing power, no matter how pure or lofty its motives and actions, continue to fill them with the most zealous partisans; and so long as the controlling qualification of the appointees is partisan zeal, no matter how good their intentions and purposes, the interests of the institutions must be subservient to political inter-

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ests. The trouble is with the system, rather than with the executioners of it, and not only should the institutions be protected, but the appointing power and appointees should by law be relieved of the inevitable consequences of present practices. The cause of education throughout the State sustained a great loss when the application of this system to a prominent educator drove him to other fields, and the interests of our noble University — the one institution which has always illumined the horizon when all else seemed enshrouded in mists and darkness — were sacrificed upon the altar of political thralldom. Whether justly or unjustly, there is a widespread belief that under the cover of benevolence, the trustees of our charitable institutions have perverted their authority in directions injurious to the public weal. It is boldly declared that the infirm and afflicted, as well as the unfortunate occupants of our penal and reformatory institutions, have been subjected to horrible treatment and gross neglect by ignorant, incompetent and unqualified custodians, by reason of the system in vogue, so that the munificence of the public has fallen far short of its lofty design and purpose. I especially mention these charitable institutions because of the pressing necessity for a reformation in the notorious and disgraceful administration of them which exists and must continue to exist in a greater or less degree until the same business sense and business principles are adopted that make private affairs a success. But when this is accomplished, we should demand that appointees to positions of public trust have some other qualification of fitness than reward for political services. There is no reason why these public servants should not be especially educated and trained for these important trusts, as mechanics, lawyers, ministers and others are; and when so qualified, let efficiency be a safeguard against political machines — then will sycophancy be supplanted by independence, and incompetence by merit. These suggestions are moral and business sentiments, rather than political. In her recently adopted constitution New York has provided that the competitive merit system shall be applied to State and municipal government, and the civil-service rules are in vogue in Massachusetts. It is time for Kansas to move forward in these matters.

REFORMATION OF CRIMINALS.

Another subject akin to this, to which the bar manifests an indifference — and I trust I may not be considered harsh if I say ignorance of — is the failure to make provision for the proper care and reformation of the criminals of our State. I would like to devote all the time allowed me this evening to a discussion of this question, which to my mind is of such transcendent importance; but having upon a former occasion presented some views to you upon a kindred subject, and having within a few months somewhat exhaustively treated it in a magazine article which some of you no doubt read, I shall not weary you by any extended reference to this subject of such deep concern, both from the standpoint of expediency and morality. The unusually complete and carefully compiled statistics of the last census, which are confirmed by all leading penologists, reveal a great increase in the volume of crime. This in turn has led to a closer examination into the causes which produce it, as well as the remedies

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for its prevention. Of course all take cognizance of the fact that the true way to reform men is by the betterment of the heart, but, that certain educational processes and favorable environments will facilitate such work, is likewise apparent. Anyone at all familiar with human nature knows that men cannot be *driven* to a better and higher life, for the application of such means meets with a spirit of resentment and excites antagonisms which intensify the spirit of opposition. Only by exciting the better faculties of their being and appealing to their higher natures and drawing them away from their baser animal natures, and, by the processes of evolution, prepare them for a voluntary acceptance of that course of life that inures in good citizenship, can they be reformed. With the advanced criminal not much can be done, but in our State a large percentage of the nearly 2,000 persons constantly in her various prisons are young men, many of whom might be elevated to a higher plane of life and usefulness. The average age of convicts in the penitentiaries of the United States is thirty-four years, and in our State the average is probably lower. I have made some examination of this question, and have taken the commitments in our penitentiary for May, 1894, as an illustration of the classes involved. There are forty-three of them; their average age is twenty-nine years, and their average sentences three years and 156 days—and many of them are mere boys. Whenever a man comes under the ban of the law, a reciprocal, mental barrier is erected between him and society, and our attitude towards him is greatly changed. In four short years to us, but long, brooding ones to him, he is again a part of society. These people were unable to conform to the rules of society under the favorable environments of liberty. Now ostracised and made to feel the weight of the strong arm of the law, removed from the better influences of life, probably deserted by the friend of prosperous days, compelled to live and associate with the congregated mass of depraved humanity, betterment, under such circumstances, is scarcely a possibility. Meanwhile, we who pose as examples of good-citizenship have kept them there solely to punish them and express our disapproval of their conduct—and they are thus made worse. It must be apparent to every observant citizen who has even casually examined the prison methods of our State, that by the commingling of prisoners of all grades and ages in our county jails, and by the exclusive punitive method of treating our penitentiary convicts, they are the best schools of crime conceivable. Of course the criminal should be punished, but the period of punishment should be educational to the physical, mental and moral man, and any method that does not do so is far behind the spirit and enlightenment of the age which has conceived the great reformatory schools, and in some States made provision for their maintenance. In the eighteenth century a pope inscribed upon the walls of a great prison which he erected in Rome: "It is not enough to restrain the wicked by punishment, unless you make them good by instruction." This is the thought I would impress upon you, and I can no better express myself than to quote from some thoughts heretofore written by me:

"In 1885 the Legislature enacted a law creating a reformatory, provided a commission to locate and superintend its erection, and made an appropriation of about a quarter-million dollars, which was expended upon it in the beautiful

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city of Hutchinson. The conception and execution of this law, so far as it went, were in harmony and accord with the most advanced ideas and designs. It provides that all male convicts between the ages of sixteen and twenty-five who have not heretofore been sentenced to a State prison shall be committed thereto. The discipline to be observed shall be reformatory, and agricultural labor and mechanical industry shall be resorted to as an instrument of reformation. For want of an appreciation of its benefits and necessities, for five years nothing has been done toward completing or utilizing it. Its dead walls alone have mutely appealed to our stoical apathy, and proclaimed to every passer-by our retrogression. Political demagogues of all parties have vied with each other in disgracing and proclaiming the disgrace of our fair State, indulged in 'legislative wars,' and in confusion have discussed 'fusion.' Blatherskites have prated about old exploded theories of other centuries; visionaries have built their castles in the air and seen them vanish as the bubble; fossilized partisans have closed their eyes to the living present and rested on the honors and valor of the heroes and martyrs of the glorious past. Meanwhile, the minions of darkness are incessantly making worse the criminals in our prisons, who in turn contaminate society, and not a hand is lifted to check the nefarious work, so devastating and subversive of good government. This question of saving the present generation from the corrupting influences of the pariahs we are thus making, is of transcendent importance. To generations yet unborn we owe an obligation, for if those who may be saved from the vortex into which their tendencies have started them are not arrested, their natures changed, or other means taken to check them, they will multiply criminals in infinite numbers, to the hopeless retardation of the world's progress.

"This may be sentiment; but many of the so-called 'economic' questions agitating the country are purely sociological and moral, and statesmen and patriots (and we have lots of them in Kansas and elsewhere) and legislators will never solve them until they recognize them as such. It may be enthusiasm, but the hundreds of victims of our criminal neglect and ignorance in this regard furnish ample excuse for it, while the thousands of young men who are the legitimate prey of these parasitic malefactors demand it. Crimes take on the hues of the community where they are committed, and guilty men show a guilty community. It may not be a matter of public interest, but it should concern every good citizen, and affects all morally, socially, and financially. It may not be a popular theme, but its consideration is a heart-service to our morally maimed fellows who need our commiseration and active assistance."

Since writing the above, I am glad to see that public sentiment is being aroused and indications are favorable to action.

OUR DISFRANCHISED CITIZENS.

I had hoped and expected to be able to call your attention to certain laws which in my judgment we should labor to have enacted to give force to the recently submitted amendment to the constitution conferring the privilege of exercising the right of franchise upon women, but unhappily the result has relieved me of doing so. Like all others who can see no valid reason why one

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half of our citizens, morally better and intellectually as good as the other half, should be denied a voice in administering that government of which they are subjects, I stand aside and try to analyze the causes that made such result possible, and pensively gaze into the vista of the future, wondering how long it will be before prejudice, arrogance and egotism will yield to that spirit which concedes to every other the rights we claim and exercise for ourselves.

CONSTITUTIONAL CONVENTION.

A constitutional convention is thought by many to be a pressing need, but there is a great diversity of opinion as to its necessity or expediency. Among the reasons urged in favor of it are: (1) An increase in the number of judges of the Supreme Court; (2) Lengthening the tenure of office of State and county officers, and especially judges of the district courts; (3) Permitting special legislation for municipal corporations; (4) Relieving stockholders of private corporations from personal liability; (5) Lengthening the sessions of the Legislature; (6) A repeal of the prohibitory liquor law; (7) Making suffrage universal. Some of these are weighty and cogent. In their support it is argued that our constitution was adopted when there were but a few inhabitants along the eastern border, and that now we are a mighty empire with one-and-a-half million people, having different wants and requiring different remedies from that handful of people. New York and other States are cited as illustrations of a people who see the necessity and have the courage to frequently change their organic law, and certainly the heroic manner in which the State named grapples with it excites our admiration. On the other hand, it is argued that the constitution meets all the practical requirements of the people, and that wherein it fails, it may be aided by amendments and legislative enactments; and that the expense of a convention would be altogether out of proportion to the benefits which would accrue. I believe I voice the sentiment of nine-tenths of the bar of the State when I say I am in favor of remodeling the constitution. It is a requirement of the State, amounting almost to a necessity. The opposition of the expedient statesman who fears the loss of prestige, of the timorous soul who imagines that every movement towards a convention is a direct blow at the prohibitory liquor law and portends a return of the saloon with all its blighting influences, of the anti-suffragist who apprehends with fearful forebodings the degradation of our noble women if we should permit them to enjoy the full immunities of citizenship, and of the parsimonious fellow who believes that every dollar expended in public affairs is a reckless waste, would largely dissipate and wither away, and many of them would become our allies if we who are lawyers first, and politicians afterwards, would boldly take a stand for a convention upon the ground of principle. The impending spectacle of the worst and best elements of society—the saloon and women—making a common demand for a constitutional convention, would be anomalous in any other country, but is in perfect accord with the ways of Kansas, where excesses and eccentricities revel in such sportive delight, yet always evolving a harmonious whole, which is the glory of herself and the envy of the rest of the world. I

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feel assured that the good sober sense of the delegates who would frame a new constitution, and the deliberate judgment of the acute and enlightened people who would ratify it, could safely be intrusted to act for their best interest and greatest good.

ADMISSION TO THE BAR.

A theme of perennial agitation is the elevation of the standard of admission to membership in the profession. Views of qualifications vary, from those who contend that every man should be his own lawyer, even if he finds out later that which every attorney knows to be true, that "he has a fool for a client," to those who are favored with a collegiate education, and think that a knowledge of the classics will atone for the absence of practical common-sense and supply all other deficiencies. A careful and conscientious consideration of this subject by men of wide experience and observation in this and other bodies, has led to the conclusion that a uniform and higher standard of qualifications than that in vogue should be adopted in Kansas to elevate the ethical and educational standard of the bar; and never was the time for action more auspicious than now. We should not content ourselves with recommending the adoption of rules by the various courts, but should see that a law covering the case is enacted.

There are various other subjects of local interest to which I might properly call your attention; such as securing the enactment of laws in the interest of irrigation; the better enforcement of some existing laws, notably the prohibitory liquor law; the payment of reasonable compensation to legislators; the protection of existing and upbuilding of internal commercial and manufacturing enterprises by preventing unjust discrimination in freight rates; the enactment of rigorous laws giving effect to the provisions of our constitution prohibiting the baneful lotteries from conducting their morally injurious and financially wasteful schemes in our State; the adoption of more just and uniform methods of taxation; the abolishment of the practice of giving free passes to governmental officials, which the highest judicial officers of the State — all honor to them — have recognized as a prudent and proper movement to lead off in. But I must desist, for I wish to devote a little time to a consideration of some of the questions of a more general nature which are agitating the active, observant minds of the world, and which we, as a profession, must help to solve. And first, and perhaps most important, is

SOCIALISM.

Socialism corroborates the saying of the wise man, that "there is no new thing under the sun," for, at frequent periods adown the ages, some zealous spirit, weary of the strifes and burdens of imperfect, selfish humanity, inspired by a desire to realize that ideal which is attainable only by infallibility, has presented its claims only to have them rejected after the crucial test and analysis of the practical realist have been applied. The present manifestation is perhaps deeper seated and more widely diffused than any heretofore, and the large number of profound thinkers, wide observers and ripe scholars whose

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hearts and lives are devoted to the uplifting and advancement of their fellowmen, who look approvingly upon some of its principles, forbids its reception with a sneer, or its dismissal with a flippant jest. But, regardless of that fact, a lawyer, above all others, should accord to every honest view a patient, fair and dispassionate consideration; and as no class of citizens bears a greater part in combatting error and maintaining truth than the legal profession, it is an especially appropriate theme for the thoughtful consideration of a body like this. A few months ago, when the public mind, under the influence of passion, excited, dismayed, and bewildered; when law and order were supplanted by anarchy and chaos, every hopeful face turned to the courts and lawyers of the country with a suppliant and pathetic appeal, and the heroic manner in which they met the responsibilities of the hour was a high compliment to their patriotism and stability.

John Stuart Mill twenty-five years ago said that "the working classes are entitled to claim that the whole field of social institutions should be reëxamined, and every question considered as if it now arose for the first time." The battle is now on, and it must be fought out. The physical toiler arrogates to himself the title of "laboring man," and looks with jealous eyes upon him who labors equally hard with other faculties of his being; the man whose environments and natural endowments have not enabled him to obtain a liberal share of property looks covetously at his more fortunate neighbor whose Lord intrusted him with ten talents instead of one; the benevolent dilettante, observing the hardships naturally resulting from unfavorable environments and these natural inequalities, draw beautiful though seductive pictures of what life would be were all placed upon a common level, and our selfish, ambitious and aggressive natures so absorbed by our divine attributes that those characteristics which distinguish us from celestial creatures, and make us glory in the estate called man, would be wholly eliminated; the vicious sluggard, who regards every one who has acquired any property as a legitimate subject for his prey, and looks upon laws that restrain and punish him as encroachments upon his liberties, unite in decrying "existing conditions," and offer some form of socialism as a relief from those who, honored with the trusteeship of this world's goods, but absorbed in selfishness, blunted by egotism, blinded by prejudice, and warped by ignorance, are unconscious of their favored estate, and transform their power for doing good into engines of oppression, and their opportunities for usefulness into occasions of presumptuous disregard of the rights of those they are delegated to serve.

I scarcely need confess to you my incompetence to discuss a question of the magnitude and intricacy of this; and if I were capable, I could not do so very elaborately upon an occasion and in an address like this.

In truth, I scarcely know what socialism is, and I believe there is a very ill-defined idea of its scope and purposes. Its definitions, boundaries and intents are almost as numerous as the individuals who even mentally define it. Von Scheel defines it as "the economic philanthropy of the suffering classes"; and Adolph Held says, "We may define as socialistic every tendency which demands the subordination of the individual will to the community." Mr. Rich-

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ard T. Ely, in his late work on socialism, says that "in its more general sense it implies the rejection of the doctrine of selfishness as a sufficient social force, and the affirmation of altruism as a principle of social action." "True socialism," says Kidd in his "Social Evolution," "has, however, one invariable characteristic by which it may be always recognized, whether it takes the form advocated by the more prevalent German school, or by that anarchist section represented by Proudhon and Bakunin, whose ideal, despite their title and methods, is really a morally perfect state in which government, law and police would be unnecessary." "True socialism has always one definite object in view, up to which all its proposals directly or indirectly lead." "This is the final suspension of that personal struggle for existence which has been waged, not only from the beginning of society, but in one form or another from the beginning of life." Our imaginations, quickened by a desire to enjoy that perfection in human affairs which inures only in Divinity, may awaken a hope of the attainment of that perfection which would make such a life possible, but our common-sense and knowledge of humanity refuse to honor a requisition for its fulfillment. Our concern is not with an imaginary creature, but with man as he actually exists, full of imperfection, "standing with countless æons of competitors around him, every quality of his mind and body the product of this rivalry, with its meaning and allotted place therein, and capable of finding its fullest and fittest employment only in its natural conditions." I can but feel that the realization of the conception of socialism is a reflection upon man's Creator, in that it implies an extinction of at least one of the triune natures with which He endowed him; nay, more, it reaches to his environments, and proclaims this earth, so perfectly adapted to the fulfillment of all his wants, an accident, or mistake. Mr. Kydd forcefully portrays this truth when he declares that "if our conscious relationship to the universe is measured by the brief span of individual existence, then the intellect can know of only one duty in the individual, namely, his duty to himself to make the most of the few precious years of consciousness he can ever know. Every pain avoided, every pleasure gained in these few years, is a consideration beside which the intellect must count any aspiration to further a process of cosmic evolution in which the individual has no interest as mere dust in the balance." A consideration to which every other must appear dwarfed and ridiculous in comparison. Remove from man all incentives to action except such as will procure for him the necessities of life, his spirit of emulation limited to the ethical consideration of others, and you have laid the foundations for his destruction—*as a man*. As all men could not be brought to a standard of wisdom and intelligence, those who would excel must be brought down to the level of the common multitude. With efficiency thus disarranged, the mainspring of action would be broken, life would become a dreary, monotonous waste, and we would retrogade and soon relapse into our primitive condition. But if it be said that under this system, as in every other yet conceived in universal creation, there must be a head, and that in aspirations to leadership and proficiency in carrying out the design of socialism there would be ample opportunities and facilities afforded for the exercise of all the faculties of our being, sufficient to incite and speed us onward toward perfec-

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tion, I answer that then there is no departure from the principles of the competitive system, except that in lieu of the present restrictive and controlling prerogatives of the government, it would abdicate its functions and become a competitor in the affairs of men and fields of industry, and a governmental officialism and superintendency would be substituted. We need not travel far to see that this kind of patronage offers a premium upon favoritism and sycophancy, rather than upon sturdy, manly merit, and is a source of weakness and not of strength.

I am not insensible of the great wrongs of man to his fellows, and of the fact that "society is organized into great battalions, for the express purpose of making war upon each other"; that we have syndicates, corporations and federations of capital on one side, and societies, trades unions and federations of labor on the other. But it is not a revolution in the world's affairs — a change from individualism to agrarianism or socialism — or even a reconstruction of the present social system, but an application to the affairs of men of well-recognized laws, promulgated and delivered to man by the great Law Giver, that is the need of the hour. Until that materialism which insists that man can attain perfection and maintain his autonomy independent of his Creator; until that religious bigotry which conceives that it owes its whole duty to God and none to man; and until that cynical agnosticism which practically disavows an obligation to either God or man, shall recognize and comprehend the sublime fact of the "FATHERHOOD OF GOD AND BROTHERHOOD OF MAN," we shall flounder in the quagmire of difficulty. To the pronounced socialist, the advanced thinker (so called), and the agnostic, this sentiment may excite pity, contempt, and derision; but the more I reflect upon the history of man and consider his relations and duty to his fellows and his God, the more deeply do I become entrenched in the view expressed, and the more clearly does it appear to me that the wisdom of all the past which is crystallized in our present social system is the best and only practicable one adapted to the demands and desires of mankind. Our trouble arises chiefly from two classes, namely: "The anarchists of the poor, who aim to arouse bitterness and hatred, and who shrink from no exercise of force, provided they think they can thereby accomplish their ends. With them the torch and dynamite bomb are questions of expediency." On the other hand, there are men who advocate the claims of wealth, who are enwrapt in self, absolutely wanting in sentiments of brotherly kindness, puffed up by their own self-importance, incapable of conceiving the privileges and duties afforded by wealth, who are animated by the same spirit of intolerance and fanaticism as the bomb class of anarchists, and are none the less foes of good government. Characters of this kind are found in abundance in all the higher classes of society — in the ministry, in politics, in commercial circles, in literary fields, and in the legal profession. It is as amazing as it is mysterious how so many of those who by the superior light and advantages afforded by wealth, education and social position, become estranged from the surging, dependent masses of society, and render them so little service, and by this neglect deprive themselves of the richest heritage of life. It is a historic fact that the educated and cultured classes, as a rule, are the most tardy in

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accepting reforms for the elevation of the lower strata of society. *Their* need is more HEART service. The admonition to "be diligent in business" is inconsistent with the socialistic theory, but it is not a license to oppress our fellowmen and indulge in dishonest practices under the pretext and cover of business ethics. Competition, rivalry and ambition are not only right, but are necessary as the world is created and as its master, man, is constituted, but they must all be regulated and subordinated to the sublimest edict ever emanating from a law-giver, viz.: "Whatsoever ye would that men do unto you, do ye also unto them." The eminent statesman of our commonwealth was not far astray when he suggested that the decalogue is given no place in politics, and he could truthfully have added, "it is not given much of a place in business and professional ethics"; but the world is demanding that it be done. Very little objection can be taken to Pullman's methods of business, viewed strictly from a business standpoint; and yet he was almost unanimously condemned because he did not apply this rule to his trusteeship and relieve the necessities of those who had been instrumental in helping him acquire his wealth, and thus avert the conditions which made the historic strike inevitable. Neither party to a great strike can longer hope for success, unless sustained by public sentiment, and the great public conscience is guided in its sympathies by this rule. It has finally advanced far enough and has become so sensitive upon this point that it can recognize the tyranny of labor as well as the tyranny of capital. The designing and insidious agitator who incites the physical toiler to mutiny against his brain-toiling employer, and so inflames his passions that lives and property are destroyed, and who having exercised his own inalienable right to cease working, by force and violence prevents others from doing so, involving irreparable loss to the millions, is placed side by side with the manipulators of trusts and combines and the employer who deals unjustly with his employés. The trend of public thought is to recognize all these as public enemies, and every patriot should feel that it is his first duty in life to subjugate them. The confusion is occasioned by a failure to distinguish that abstract socialism which proposes to revolutionize and reconstruct society and regulate it upon a perfect plan, from a correction of the wrongs and abuses of society as now constituted. One of the greatest hindrances to such correction is, that every reformation or advancement is condemned by certain classes if they even remotely necessitate the adoption of measures which are embraced in or are akin to socialistic theories, simply because of that kinship. This is neither good sense nor good citizenship. While my political faith leads me to oppose the enlargement of governmental functions, yet questions of expediency and of necessity cannot be ignored, and should the exigencies of the times require radical encroachments upon what I deem a correct principle of government, my duty as a citizen would not only require me to submit to it, but I would be obliged to work for its accomplishment. Yet I would not necessarily be a socialist, or sympathize with its impracticable or impossible propositions. This enchanting, complex, fallacious and profound system has many conscious and unconscious devotees enfolded in its seductive embrace. The legal profession as the conservator of stable institutions has a mighty and immediate work to do to disen-

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thrall them, and to ward off the dangerous encroachments and tendencies of their beliefs. It need not "perish by precedent, rather than be saved by innovation," but it must draw the difficult line of demarkation between that legitimate and conservative progression which imparts health, vigor and stability to governments, and the excessive and extreme innovations upon time-tried and truth-tested principles, revolutionary in their character and subversive and destructive of the very foundations upon which our structure rests. Marvelous advancement will be made in all of those things which make people greater, grander, and happier; heights in progress will be attained that we scarcely conceive possible to-day. Rebellions against the wrongs committed in violation of moral and statutory laws will necessarily continue so long as human imperfections interpret and enact them, but the anticipated and threatened revolution in the social fabric will never be realized by the Utopian dreamers. Nations will be formed, flourish, decline and die in ages to come as in all the past. In material and mental development they will rise to wondrous heights, grasping more or less of infinity, but, obedient to the law of human fallibility, will tremble, totter and fall only to again marshal their inherent natural forces and repeat again and again the same processes, until He who designed this wondrous world and created man and gave him dominion over it, shall declare His purposes fulfilled.

ELECTION OF UNITED STATES SENATORS BY POPULAR VOTE.

Another proposed innovation intended as a restraint upon capitalistic tendencies is the election of United States Senators by popular vote. The reason assigned is, that Senators are rich men who gain their places by corrupting the legislatures, and are not in sympathy with the wants and wishes of the common people, and therefore do not represent them. It is argued that this is unfolding one lap in the process of the great socialistic plan, and therefore that opponents of socialism are called upon to resist it. While this objection is not wholly groundless, it seems far-fetched. There are, however, weighty objections to such a step, and a more dangerous proposition has not recently appeared. The elections for the last four years have demonstrated that the danger from mobs is not always manifested in riots and lynchings, industrial armies, strikes, and legislative wars, but in a different form may express its approval or give vent to its spleen by the ballot, in a way that is exceedingly perilous and inimical to a stable government. The recent vote of 137 ayes to 49 nays in the House of Representatives to amend the constitution to so elect Senators, shows that a check upon hasty and inconsiderate action when matters of great concern are involved, must be sought elsewhere than in that body. The framers of our constitution seem to have been almost imbued with inspiration when that wonderful instrument was created, and nowhere is their wisdom more apparent than in placing the Senate where it could be a brake upon the chariot-wheels of state. By removing it so far from the contingencies of reelection and other influences of the populace in times of epidemic excitement and blind partisan and sectional animosities, it is not likely to be swayed by the frenzied populace. The same may be said of the life tenure of Federal

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judges. It is too much to believe that the Federal judiciary would have taken the heroic action it did during the anarchistic outbreaks last summer, had it not been independent of the turbulent characters it subdued. In its invulnerable fortress, however, it is a safeguard of our institutions, and yet itself is safe from the assaults which have since been made upon it by every blatant anarchist and his sympathizers. Until immigration is restricted, the naturalization laws are radically changed, and an educational and property qualification is imposed as a condition of enjoying the right of suffrage, we dare not remove the safeguard which the present mode of electing Senators affords.

GOVERNMENT OWNERSHIP OF RAILROADS.

The greatest stride towards socialism, and one of the most serious questions confronting the people of this Republic, is the proposed transfer of its vast railroad system and similar industries to the paternal care and keeping of the Government. That the abuse of power, arrogance and oppression of these gigantic monopolies have strained the patient forbearance of the people to its utmost tension, is a notorious fact. On the other hand, the surrender of the great prerogative of individualism to the political power is retrograding from democracy towards monarchy, and is a confession that our republican form of government is at least a partial failure. My whole nature rebels against the proposition. The spoils system which would be a necessary concomitant of such an act, is a far greater menace and injury to our institutions than the monstrous wrongs of these colossal corporations. Railroads have been the greatest civilizing influence of the past twenty-five years, and have been the means of affording more pleasure and diffusing greater knowledge to the masses than any other; and the favor with which they have been regarded has afforded opportunity for abuses that would not otherwise have occurred. The very knowledge which they are so potent in disseminating will furnish an antidote for their own wrongs. The intelligent public conscience will arise in its majesty and require that their management be conducted upon the ethical plane of individual affairs, and the same power will insist upon an improvement in both. A more heroic application of the all-powerful intelligence of the people to a regulation of them will be far better than the cowardly desertion of the cherished principles of democracy, established and preserved for us by the sacrifices of our forefathers, and will inspire us with a patriotism which will make us more worthy recipients of their precious heritage.

I would be pleased to call your attention to other questions of a mixed moral, political and economic nature, but I can merely mention some of them, with the earnest suggestion that their importance demands your conscientious and careful consideration. None of them is fraught with more danger to our country than the unrestricted immigration which is pouring into it a polluted stream of viciousness and ignorance with such a volume that we will be submerged by it unless its tide is speedily stemmed and its flow purified.

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LABOR AND CAPITAL.

The delicate task of adjusting and maintaining the relations between the capitalists and the exploited class is one that calls for the exercise of the greatest wisdom, the broadest charity, and the most patient thought. The impatient and arrogant spirit which looks upon all who by word or deed seek to lighten the burden of the physical toiler as anarchistic sympathizers, and the ignorant and demagogic spirit which imputes to those who are not manual laborers, or who contend that capital has any rights, as enemies of the poor, are not in harmony with these suggestions, and will not bring these elements — so far removed from each other — together. Therefore the proposed board of mediation, empowered by law to consider matters of dispute between these parties in a spirit of fairness and justice, is a most desirable attainment to be sought for, even though its powers be chiefly advisory. Not the contradictory scheme called compulsory arbitration, which is favored by some — for that is not arbitration at all — but a submission of points in dispute to disinterested parties, whose judgment would be considered as binding upon every honorable party to such submission. A party desiring fairness could not object to such a tribunal, and others should feel the force of its influence. I see no reason why it should not meet with the same favor in business matters that it does in international affairs. We may argue that brain-work is as hard as manual labor, but I notice that none of us are especially anxious to get into positions requiring physical exertion. The fact is, the lot of the common laborer is a hard one in every sense; his arduous toil, long hours, small compensation, dependence upon others, and the social ostracism endured by him, all render him a subject deserving the friendly aid of every lover of his fellow-men. There should be no such strife, jealousy and hatred between the laborers in the great workshop of the world as exists, and it exists only because of narrow-mindedness and ignorance — not necessarily intellectual ignorance, but ignorance of the proper relation which we bear each to the other, and without a proper conception of which no one can be truly great. The failure to appreciate this obligation engenders the spirit of caste, and caste is not confined to oriental countries. It is a living, burning question with us, and is the greatest of all impediments to our progress. I wish we could get away from the erroneous idea that property and position make the man, and find our ideal and equal in him and him alone who does his very best, whether his service be the most menial or exalted.

DUTIES OF THE LEGAL PROFESSION.

Brethren, you and I are to-day living in the most enlightened, powerful, and grand nation known to earth's history; in an age of dazzling splendor, electrified and illumined by an acute and profound intellectuality, intensified by an unparalleled energy and nerve-force. The elements of nature are utilized and the faculties of man developed as never before. Means of communication and transportation have suspended time and annihilated space, and the world is rapidly becoming one people, and that the English-speaking people. We are surging forward at a fearful momentum, perilous and intoxicating. Grave,

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complex, and delicate problems are to be met, and they must be solved in such a way as will sustain us among the nations of the earth, meet the approbation of the rest of the world, and bear the scrutiny of future ages. It means much to live and perform the humblest part in this great drama, but to fulfill the obligations of a lawyer means much more. From his theoretical and practical knowledge, his position and power in the affairs of men, no class or profession wields so great an influence in shaping the destinies of the civilized world as he.

He is not only recognized as the most *conservative* factor in all the relations of life, but is perhaps a *greater teacher* than any other. In his addresses to juries, in his contention for interpretation of the law before the court, or his enunciation of it as a court, and in his advice to countless clients in the multifarious business, social and civil affairs of life, he is an instructor. His practical judgment and trained mind are the controlling force, the directing power, in all the interests that men hold dear. The gigantic corporate business; the diversified commercial interests; the intricate social problems; the perplexing economic questions; the multiplicity of laws regulating our government, have in the legal profession their mainspring and guiding star. In it constitutional liberty finds its most zealous protector. There the humblest citizen finds a champion of his cause against his powerful adversary, and the basest criminal a voice demanding a fair and unbiased consideration of his case in the face of all opposition; and the troubled soul hastens to the presence of his lawyer, and with assurance reveals safely to him the secret impulses of the deep well of his heart as he dare do to no other. De Tocqueville said, "I cannot believe that a republic could subsist at this time if the influence of lawyers in public business did not increase in proportion to the power of the people." On another occasion the same eminent commentator upon the American republic declared that the legal profession is "qualified by its powers, and even by its defects, to neutralize the vices which are inherent in popular government." "It extends over the whole community and it penetrates into all classes of society. It acts upon the country imperceptibly, but it finally fashions it to suit its purpose." No less eminent an authority than Judge Cooley, in his recent address before the American Bar Association, said every member of the legal profession "is or should be from his very position and from the license which gives him special privileges in the determination of legal questions and controversies, *a public leader and teacher*, whose obligation to support the constitution and laws and to act with all due fidelity to the courts is not fully performed when the fundamental organization of society is assailed or threatened, or the laws defied or likely to be, in the community in which he lives, as a result of revolutionary purpose or of ignorance or unreasoning passion, unless he comes to the front as a supporter of settled institutions and of public order, and does what he properly and lawfully can to correct any sentiment, general or local, that would in itself be a public danger, or be likely to lead to disorder or unlawful violence. It is a low and very unworthy view anyone takes of his office when he assumes that he has nothing to do with public ignorance of the duty of subordination to the institutions of organized society, or with breaches of law existing or threatened,

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except as he may be called upon to prosecute or defend in the courts for a compensation to be paid him."

When we look away from this theoretical and ideal standard to the prosy realities of every-day life; when we drop from these heights to the trial of a petty dispute in a justice court, or a misdemeanor before a police magistrate; when there is revealed to us our mental infirmities and moral weaknesses, which we are all so conscious of possessing; when there flashes across our vision the knowledge of neglected opportunities — now forever lost; when we are involved in the hard and bitter struggle for bread, we may well grow faint and despair of even approximately measuring up to these requirements. In these things we find many of the reasons why so many of our numbers fall by the wayside and engage in other pursuits; why some become mere collection agents, others become employés in the deep and intricate but narrow field of corporate business, and scores wholly ignore basic principles and become mere followers of precedent, and still others seek the political arena as affording more favorable opportunities for honor and advancement. I recently read in the editorial column of a law periodical having a wide circulation, that "for nearly a century the great lawyers of the nation lifted our jurisprudence above the steadily rising level of the people, but within the last twenty-five years law, in its practice, has manifestly deteriorated." I do not take this pessimistic view of the profession, but if there be any truth in it, the peculiarly exciting conditions existing during the period named will largely account for it. True, lawyers are required to be less of the recluse and student and more the man of affairs than formerly. And while there may not be as much abstract philosophizing as in other days, the practical learning is superior, and the bar is in closer touch with the great throbbing pulse of humanity than ever before. The science of law is as certain as any other, out of the domain of mathematical and physical science, and has its foundation in reason and justice. While there are bad men at the bar, and none are faultless, I believe that as a whole we can court a comparison with any other calling. I also believe that the ethical standard of the age is as high, and that there is less ground for charges of corruption against the courts and bar than at any time in all the past. Cicero gives us an idea of the moral standard of the great Roman advocates when he says, "for what do the profession undergo their enormous labors except for applause of their fellow-men?"

When we come down to the Middle Ages we see that the law was made an engine of oppression. The notorious Jeffreys and the great Coke furnish conspicuous examples of the methods employed. As another illustration, witness Sir Matthew Hale, the highest and noblest type of the profession in his time, judicially executing spiritually-minded women upon the charge of witchcraft. Lawyers have always been subjects of criticism. The bard of Avon in Henry VI. expresses the prevailing sentiment of his time when he causes one of his characters to exclaim, "The first thing we do, let's kill all the lawyers." The great and good Chief Justice Marshall did not escape, and no less a personage than Thomas Jefferson declared in substance that he prostituted his office, and pronounced him unfit for his high calling. We need therefore not be dis-

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heartened at the mutterings and complaints against the legal profession to-day, for a majority of its members are permeated with and controlled by a sense of duty and an obligation to make better the lot of humanity. Ancient or modern history has not furnished a parallel to the Supreme Court of the United States, which for more than one hundred years has blazed the way through the unexplored forests of a republican form of government, and has preserved its ermine unsullied and unstained. Unimportant as our office may seem to us, the members of this body are nevertheless a part of the great legal department of the government, and while I would not indulge in fulsome praise, I am proud to repeat to you the saying of the distinguished guest of this Association at a recent session, that while he had "met many bodies of representative men of various callings in this and other countries, he had never seen so large a percentage of strong faces as the Bar Association of Kansas" presented.

Still we all know that our lives and professional qualifications are not what they should be. We should rise above the impeding environments which keep us down. We must realize that the law is a profession, and not a trade, or business. We ought to dig down through the rubbish of superficial knowledge to the foundation of generic principle, and erect a broad, strong superstructure thereon. Our code of ethics and professional conduct should be such as to repel the gibes and slurs so freely thrown at lawyers and so commonly believed to be deserved. We must bear in mind that *change* is not *advancement*. We must depart from that fossilism which we sometimes mistake for conservatism, and distinguish the unstable and fantastic projects which constantly intrude themselves upon us, from the resounding tread of real progress, which is always anchored to everlasting truth. We must keep our hearts in touch and tune with our co-laborers in every field in the evolutionary process of developing man into his grandest possibility. We must never forget that the fabric of justice is dependent upon our courage, learning, and moral qualities.

He who merits the honorable name of lawyer can be no sinecurist. His life is one of intense activity and incessant labor. But if he appreciates the privileges and opportunities afforded for usefulness to the world by his profession, and measurably strives to embrace them, his consciousness of having done so will richly reward him. His life may not be commemorated by colossal monuments which crumble to dust, and his name may not be enrolled upon the perishable tablets of the proud temple of fame, yet his ambitious efforts and hopeful aspirations may well be satisfied with the knowledge that he has a part in the immortal work of upbuilding the more glorious temple we call human life.

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Some Thoughts about Kansas.

By Justice DAVID J. BREWER.

It may be that there is nothing new to be said about Kansas, and it is true that the story of her life has been told over and over again until her name has become a household word wherever in this world human hearts beat with love of liberty, and with aspirations for a better and nobler life. And yet you will pardon one of her sons in to-night adding his tribute of praise for what she has already done, and in expressing his faith in the glorious future which she is yet to achieve.

Kansas is the only State which, since the foundations of this nation were laid, was settled in pursuance of a single high moral purpose. This is said in no disparagement of the hardy pioneers who, since the Declaration of Independence, have been pushing westward from the thirteen Atlantic colonies into the magnificent forests and across the boundless prairies of the great West to establish homes for themselves and families. All honor to those brave men who laid the foundations of the great central States of the Union on the enduring bases of law and justice, and who, while introducing into new lands the comforts and refinements of civilized life, were also working out successfully the great problem of government of and by and for the people. But while giving to these pioneers the credit that is their due, it still remains an unquestioned fact that the Territory of Kansas was occupied at the first, not with the thought of gain or homes, but because here the freedom of man was at stake, and the forces of two civilizations, one meaning human slavery and the other human liberty, were meeting for final conflict on the western continent.

The song of the Kansas emigrants was:

"We cross the prairies as of old
Our fathers crossed the sea,
To make the West, as they the East,
The homestead of the free."

The beginning of the end was on Kansas soil. Burning Lawrence was the Lexington as Appomatox was the Yorktown of the struggle. John Brown of Osawatomie was the John the Baptist, the forerunner of Abraham Lincoln. This one thought of liberty was the impelling force which bore the thousands of Kansas pioneers to their new home in this Territory. The electricity of this high moral purpose illumined their pathway westward, and gave to her early days the resplendent light of the grandest heroism.

It is the universal law of all great moral movements that in them is manifested a most intense radicalism, a severe and what seems sometimes almost a merciless subordination of all things to the one great purpose. Even when that purpose has been accomplished, the same intensely radical spirit remains as the characteristic of the people who have accomplished it. That victory won, the restless and eager spirit looks for other victories. Like Alexander the Great, conqueror of Asia, it sighs for other worlds to conquer. It cannot be still. It

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is tossed about in the eternal unrest of a noble soul in the presence of pain and wrong, with its heroic and constant endeavor to relieve the one and remove the other.

Kansas has been called the home of cranks. But what is a crank? Simply a man with courage and a new idea. If the idea is one of blessing and helpfulness to the world, he becomes a reformer. If, on the other hand, it is of no value, or freighted with injury, then we call him a harmless fool, or a dangerous fanatic. But the distinguishing characteristic of the crank is that, thoroughly possessed of that which to him at least is a new idea, he has such enthusiastic faith in its value and such personal courage as moves him irresistibly forward in active effort to impress that idea upon the life of the world. He is, as we say, out of gear; the wheel of his purpose will not run in the settled rut of social life; he is a constantly disturbing factor. It has been said that Kansas is the birthplace of the American cyclone. Certainly it has been cyclonic both in its political and moral life, ever startling the nation with something new and dramatic. For two centuries New England was the home of the crank. Her citizens were those who fashioned their lives not by accepted formula, but who, with positive convictions, were constantly crowding those convictions into the ways and lives of others, and thus were always troublesome. Within the last generation, however, the life of New England has passed more into harmony with that of the rest of the nation. She buys and sells, and gets gain, and is no longer the disturbing factor in political and moral life. The crank has simply changed his habitat: he has moved from New England to Kansas. There is more restless, eager, iconoclastic radicalism, more cranks good and bad, within the four sides of the State of Kansas than in all the nation besides. She has not dropped into the rut of the past, but is continually seeking after something new for the present and the future. Comparing New England with Kansas, it may be said that religion was the inspiring thought of the early New England life. The first of the two commandments, upon which, as the Saviour said, hang all the law and the prophets, was the ever-present dominant force in her life. "Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind," was the Alpha and Omega, the beginning and the end of her thought. The preacher was the real ruler, and the high pulpit beneath the overhanging sounding-board in the old meeting-house, from which he thundered forth the oracles of God, was the center and source of its civilization and power.

"Ay, call it holy ground,
The soil where first they trod;
They have left unstained what there they found—
Freedom to worship God."

On the other hand, the second commandment has been the inspiration of Kansas. "Thou shalt love thy neighbor as thyself" interprets her life—humanity rather than its creator; man more than God. "Liberty, equality, and fraternity" has been her watchword. That a more abundant liberty shall prevail, and that every individual shall be enabled to work out his own destiny (unhampered by any shackles and unrestrained by any bondage), has been her constant ideal and her unfailing purpose. Freedom has been the single golden

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thread running through all the shining fabric which her heroic sons and daughters have been weaving these forty years on the loom of history.

Let us look at two or three of the conspicuous features and events of her career, and see if I have not rightly discerned the secret of her life, and the ever-present purpose of her soul.

And first, the battle royal of the century. It began on Kansas soil. From 1855 to 1860, "No slave within our borders, no fetters in our land" was the cry to arms in all Kansas. Her murdered sons, Barber, Brown, Dow, Phillips, and a host of others were the early martyrs in the cause of human liberty. On her plains that emancipation crank, John Brown of Osawatomie, conceived the idea of invading Virginia. Resistance on the banks of the Marais des Cygnes became attack on the banks of the Potomac, and the war was on. That single attack was a failure, and John Brown died upon the scaffold, but, transfigured by the inspiration of his heroism, Harper's Ferry became a second Thermopylæ of humanity. The loved poet of Kansas has well said:

"He dared begin;
He lost,
But, losing, won."

Scarcely was the ink dry on the warrant for his execution ere it began to run along the lines of the paper which bore to the world the great emancipation proclamation. But this one historic hero was not her sole contribution to the great struggle. Out from every home marched husband and father to join the grand army of the Republic, and in the face of the hot shot, and amid the roar of the cruel guns, rose triumphantly the refrain of their song:

"In the beauty of the lilies Christ was born across the sea;
As He died to make men holy, let us die to make men free."

Again, notice her treatment of women. Until the present day woman's place in the world was disclosed by the promise of her marriage covenant, "love, honor, and obey," and the highest thought concerning her found expression in the words of Milton, "he for God only, she for God in him." The bane or blessing of her life depended on the character of the man to whom her promise of obedience was made. Her education and training were with the idea of service. But if freedom in all its amplitude works out the highest development of the man, why should it not have an equal effect upon her? Such freedom implies the open door to all honorable activities, and equal rights in all that flow from their exercise; and that liberty which the sons of Kansas claimed for themselves they extended to her. "Love thy neighbor as thyself" included both sexes.

Look at these declarations in the constitution, adopted in 1859:

"SEC. 23, ART. II. The legislature, in providing for the formation and regulation of schools, shall make no distinction between the rights of males and females."

"SEC. 6, ART. XV. The legislature shall provide for the protection of the rights of women in acquiring and possessing property, real, personal, and mixed, separate and apart from the husband; and shall also provide for their equal rights in the possession of their children."

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"SEC. 9, ART. XV. A homestead to the extent of one hundred and sixty acres of farming-land, or of one acre within the limits of an incorporated town or city, occupied as a residence by the family of the owner, together with all the improvements on the same, shall be exempted from forced sale under any process of law, and shall not be alienated without the joint consent of husband and wife, when that relation exists."

No constitution prior to that time had ever declared for the mother's equal rights in possession of her children. While a few had provided for free schools open to all, none had in terms prohibited any distinction in those schools between the rights of males and females. None had declared more emphatically in favor of women's freedom in acquiring and possessing property, and none had given as definite and as large a homestead with equal control by husband and wife. Not only in these constitutional provisions, but also in legislation, judicial decisions, and social life, has Kansas stood in the forefront in securing to woman that freedom which comes alone from the absolute equality of all individuals. The doors of every vocation, free participation in all business, and equality in all the rights which spring from person and property, have been uniformly and unhesitatingly awarded to her. Even in political matters she from the first had voice and vote in the control of the schools, later in the management of municipal affairs, and if the franchise in all its length and breadth has not been given to her it has been from the belief, whether mistaken or otherwise, that she does not yet wish it, and that the most of liberty will be found in continued emancipation from the burdens of purely political life.

Again, perfect liberty means something more than striking off the shackle or fetter. There is a servitude more ruinous than physical bondage—the servitude of the soul to the dominion of appetite. Rum is an awful tyrant. "Love thy neighbor as thyself" bade her snatch the bottle from the drunkard. She swore a great oath that her sons should be free from intemperance. The saloon must go. Into her constitution she put a declaration of absolute prohibition. She supplemented that declaration by legislation of the most extreme character. She brought disobedient localities within the near control of the central power. Parties yielded to the imperative demand; political platforms were full of ringing resolutions; opposition meant political ruin, and half-hearted support dropped many a prominent man out of sight. The whole movement was one expression of a radical, intense and uncompromising purpose of emancipation from intemperance.

The last matter which I shall notice is that which is disclosed by the curious political revolutions of the last three or four years. I am not here to discuss politics or parties, as such, but a significant fact is that a State which in 1888, out of a total of 330,000, cast 140,000 more Republican than Populist votes, in 1892 elected the latter's ticket. It must not be assumed that this sprang simply from restlessness and desire for change. The Populist party was not a mere cave Adullam, into which "every one that was in distress, and every one that was in debt, and every one that was discontented, gathered themselves." I heard a thoughtful gentleman say that in all social disturbances heretofore the farmers had been the conservative body, unaffected by passing

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whims and follies, while the significant and to him most dangerous feature of the Populist movement in Kansas lay in the fact that its strength was with the farmers and in the country, and not with the rabble and in the city. The meaning of this movement is not difficult to see. There was a deep and earnest conviction that money was becoming an unholy master in social and political life, and that the golden calf was the growing object of the nation's worship. Its central thought was emancipation from the domination of money, the elimination from society of classes based upon wealth. Various were the concrete forms in which this thought was expressed. The free coinage of silver, more currency, reduction of railroad rates, stay laws, and other like propositions which have taken such a hold upon Kansas as upon other States, all root themselves in the idea that somehow or other money is becoming a master and man a slave; that the creditor has controlled the legislation of the land, and made it to operate in his behalf; and that the full freedom of the individual can only be secured by undoing all that legislation. It is man, rather than money — the individual instead of property — which must be protected. "Love thy neighbor as thyself" meant the man rather than his possessions.

I have only outlined the scope of these movements. I have time for nothing more, and I have outlined them simply as salient features of the history of Kansas. They constitute epochs in the State life. I do not stop to commend or condemn all that has been doing along these different lines. Doubtless there have been many wrongs, but that does not justify withholding praise for the noble spirit which sought in and through them a better day for man. New England executed the witches at Salem, but that does not prevent us from yielding unbounded admiration to the magnificent purpose manifested in her history. So, whatever may have been the blunders and mistakes committed by Kansas in these various movements, or in all her life, she is entitled to the utmost praise for that enthusiasm for a larger, more perfect and universal liberty which has prompted her efforts. To have written her name as a leader in the struggle to strike down human slavery, in removing all barriers which stand between woman and any position of honorable toil and activity, in emancipation from the bondage of intemperance, and in placing all beyond the enslaving domination of wealth, would be glory enough for any State, and is the unequaled honor of Kansas. Her position as leader is evidenced by her enemies. Go where you will through this land, whenever you find one mourning over the loss of his slaves, he will be cursing Kansas; if you find one sighing for the times when woman lived only to atone to man for the wrong she had done him in the supposed larceny of a rib, you will hear him hiss out, *Kansas;* the rumseller violates the third commandment, and fills out the sentence with *Kansas;* and Wall street, whenever it fears that the grasp of its "3,000 ducats" on the life of the nation is lessening, groans out simply, *Kansas.*

And now, what has been the result of this intense radicalism? Has Kansas proved a failure, or a success? The good book tells us that "Godliness is profitable unto all things, having promise of the life that now is, and of that which is to come." Does the condition of things in Kansas to-day attest the

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truth of the declaration? Only two-score years have passed since the organization of the Territory, and in those years, in spite of border strife and civil war, in spite of drouth and grasshopper, of cyclone and politician, the Great American Desert has been obliterated from the map, and the wilderness has budded and blossomed as the rose. A million and a half of people find homes of peace and plenty on her soil. According to the Agricultural Department at Washington, her crop for the single year 1889 amounted to 240,508,000 bushels of corn, 30,912,000 bushels of wheat, 37,529,000 bushels of oats, and 8,242,953 bushels of potatoes; *i. e.*, for every one of her inhabitants 171 bushels of corn, 21 bushels of wheat, 26 bushels of oats, and nearly 6 bushels of potatoes, or, if distributed throughout the United States, it would give to every man, woman and child within their borders nearly four bushels of corn and one-half of a bushel of wheat, more than one-half of a bushel of oats, and one-eighth of a bushel of potatoes. Surely, so long as Kansas remains in the Union there will be no occasion for the bitter wail of the Irish child in the days gone by:

"Three grains of corn, mother;
Only three grains of corn."

While thirty years ago not a single mile of railroad crossed or touched her plains, in 1890, according to the United States census of that year, (from which I gather most of these statistics,) she had 8,806 miles of railroad — a larger mileage than any State in the Union except Illinois. The value of her railroad property was $462,422,646; while that of the entire property of the State was $1,799,343,501 — about $400,000,000 more than, according to population, her proportion of the total wealth of the country, and over $1,260 for each individual in her territory. And the extent to which this wealth is in fact distributed will be apparent when it is remembered that there are here no inherited estates and no excessively rich men. She had 166,617 farms, averaging 181 acres each, of which 119,576 were occupied and cultivated by their owners. She was employing 13,349 teachers — one teacher for every 110 persons — and had enrolled in her schools 423,036 pupils, being 27.98 per cent. of her entire population, and more than two per cent. in excess of the enrollment of any other State in the Union. In 1892 her common-school property was worth $10,703,708, and according to the report for the month of October, 1894, of the State Treasurer, her permanent school fund amounted to $6,902,634.15. Supplementing the common schools were academies, high and normal schools, eighteen denominational colleges with 4,200 pupils, and a growing State University with 328 students. Fitting is it that this University, the crown jewel in the educational system of the State, should be located on Mount Oread, overlooking the historic city of Lawrence, for thus the twice repeated sacrificial fires of that city will ever remind the eager youth of Kansas that liberty was the inspiration of her birth, as it is the strength and glory of her life. Is it any wonder, in view of these efforts at universal education, that the illiterates in her population among those ten years of age and upwards were four per cent. less than those of either of the thirteen original States? She had 4,920 religious societies, with 336,575 communicants, or 23.58 per cent. of the entire

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population. Belonging to these societies were 2,584 churches, or one for every 500 persons. Thus has the poet become a prophet:

"We go to plant her common schools
On distant prairie swells,
And give the Sabbaths of the wild
The music of her bells."

Surely, in the face of these statistics it cannot be doubted that it pays a State, as it pays an individual, to have in life a high moral purpose.

And now the question of profoundest import is, Has Kansas fulfilled her mission? Has her intense enthusiasm for liberty spent its force? Is the second great commandment here passing into innocuous desuetude? Is she to cease her aggressive and progressive life, and to drop into the easy ways of those who sow and reap, buy and sell, and get gain, and thus live only to enjoy the good things of earth? I believe not. Never has there been a time when the ancient saying, "Eternal vigilance is the price of liberty," was more imperative than it is to-day. Never has there been a time when the inspiring thought written into the Declaration of Independence, of inalienable rights, rights which each individual has to life, liberty, and the pursuit of happiness, was in greater peril than at the present moment. While we have gotten away from the days of slavery, and hear no longer the crack of the slave-whip or the clank of the fetter, we are steadily dropping under the domination of the policeman, and are in growing danger of having our lives wholly regulated by his imperative "Move on." There are to-day three great lines of social movement. The thought of the one is that the government do more and the individual do less; of the second, a more complete subjection of one's habits of life to the general judgment of what is best; and of the third, the swallowing up of the individual will and action in that of the corporation and organization. In each of these movements there is something of good, but much of danger; and the danger is greater because not so apparent. There is such a semblance of present good, (so many earnest and true men and women are enthusiastic in their support,) that many fail to perceive where the movements lead and what will be their outcome.

Thus, in respect to the first it is said, the Government does some things well — why not add to its functions? Its management of the postoffice department is admirable — why should it not also take hold of the telegraph, and railroads, and all the other instrumentalities of transportation, and manage them? There is profit to the individual in the discharge of such quasi-public duties as the supply of water, gas, and electric light, and the operation of street railroads. Why not let all these quasi-public duties be discharged by the public, and the people have the benefit of the entire profit? Light and air and the flowing rivers are free to the use of all; why should land, which is equally the free gift of the Almighty to humanity, be appropriated to the separate ownership of an individual? Why should it not be held by the Government for the people, and the individual be permitted only the possession of such little portion thereof as he can use, and in fact does use, without detriment to an equal right of use by others?

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In the glamour of these suggestions it is too often forgotten that the Government frequently blunders and mistakes, but by reason of its large resources and limited scope of action it is enabled to prevent serious injury from such blunders and mistakes; that it does not follow that, even if it does a few things well, it would be equally successful in the discharge of larger and more comprehensive functions, but, on the contrary, would be very likely to fail through the magnitude and number of its added labors. If the expenditure of five hundred millions a year in carrying on the functions of Government to-day draws to the national capital a horde of lobbyists, eager to share in the distribution of such sum, will the peril to a pure administration be diminished if to these expenditures be added the one thousand million and more necessary for the operation of the railways alone? If the tens of thousands of Government employés are to-day no inconsiderable factor in political strife, of how much greater significance will that factor become when those tens of thousands are increased by the hundreds of thousands now in the railway service? What, in view of such an enormous pressure, would be the chance of civil service reform? While it may be that large private holdings of unused land are detrimental to the public welfare, is it not true that ownership is the strong inducement to all valuable improvements thereon, and is it clear that the public weal will be subserved by taking away from individual effort such inducement?

So, in respect to the second of these movements, while it is undoubtedly true that man by entering society relinquishes some of his natural unlimited freedom of action, and must so regulate his life as not to injure the well-being of those about him, it is curious to notice the growing disposition to subject all the ways of a man's life to such rules and restrictions as commend themselves to the judgment of the majority. As conspicuous an illustration as any is in the matter of drunkenness. Dealing with it, society at first seized the drunkard as the obvious nuisance; then it throttled the saloon as the place of temptation, and finally — to remove the cause — it prohibits altogether and absolutely the manufacture and sale of liquor. Every advancing step has compelled a closer watch over individual action, a more complete subjection of the daily life to the surveillance of the policeman, until to-day there can be found in the legislation of some of our States, statutes opening even the sacred precincts of home to the eager steps of the searching constabulary. But this is only one of many instances of like interference. The health officer goes, accompanied by a policeman, and the drainage, the stable, the ash-pile and the waste-basket are all subject to his control. The State compels the education of the child, limits the age and specifies the conditions under which he may be employed to assist in the family support; it prescribes the hours of labor for the adult; looks into the mines and factories and the work of transportation, and regulates how they shall all be carried on; prohibits the sale of oleomargarine and other supposed noxious articles. In short, society, through the policeman, stands opposite every individual in the thousand activities of life, controlling and regulating all, and does this in the exercise of that mysterious and undefined police power, which is said to be able to do all things deemed by the majority of the people for the health, morals and safety of the community. It seems often as though

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the function of the policeman was not that of protection against crime, but that of regulation and watch over the daily life of each individual.

Far be it from me to condemn all these various interferences with personal action. On the contrary, many of them are in my judgment demanded by the most sacred interests of each and all. And yet, do we need the revelations of the Lexow Committee's investigation to suggest the possibility of peril from too much domination of the policeman?

With respect to the third of these matters, "in union there is strength," and with a view to large accomplishments and increased power the tendency of capital is to combine. The great material achievements of to-day are through corporations, but corporate action is often selfish, remorseless, and cruel. The corporation is not content to carry on its work without interfering with that of the individual, but it aims by virtue of its accumulated power to destroy all competition and monopolize the entire business. The voice of the combination and trust to the individual is, "Be swallowed up and live, or fight and die." Helpless, individually, in a contest with such accumulated power, the laborer organizes, and with force of numbers seeks to maintain his rights against the combination of capital, and in carrying on the struggle with capital the organization becomes equally despotic over the individual laborer. It determines for him when he shall work and when not, the wages he must receive, and the various other conditions of employment.

I do not propose to stop to discuss the rights or wrongs of either capital or labor in these combinations and organizations; that only which I wish to call attention to is the fact that in and by them the freedom of individual action is restrained. Indeed, the one conspicuous feature in all these lines of social movement is the fading away of personal liberty. Whatever of governmental gain there may be, however beautiful may seem the exact social organization in which each individual fills his appointed place and does his allotted work, and all lives are controlled into perfect harmony of action, the fact remains that it involves turning the course of humanity backward from freedom toward despotism, from liberty toward slavery. The dream of humanity through all the ages has been of a more perfect liberty for each individual. It has been believed that in that lies the highest development of the race.

"'Make way for liberty,' he cried;
'Make way for liberty'— and died,"

has been the song of promise of a better day. The more one is fettered, the less are his achievements. Consider the wonderful inventions which have done so much for civilization and the elevation of the race. Did ever a slave make one? Is not woman's reply to the charge of a lack of inventive skill, that her life has been hampered and restrained so as to prevent free scope to her intellectual efforts? Look at all the great works of humanity in song, poetry, and oratory, in art and literature, and in material development. Have they not come with the casting off rather than with the putting on of fetters? Has human nature so changed that placing life in grooves and surrounding it with restraints will in the future work out a different result? As we put more fetters on man, and subject him to more constant and complete control, are

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we now to enlarge his ambitions, increase his intellectual efforts, and make him more fruitful of great achievements? I know we are often pointed to the history of the early Christian church, where they had all things in common, and are told that toil for others develops the most enthusiastic and untiring spirit; but the difference between the idea of the Gospel and the spirit of these movements is that in the one everything was voluntary, in the other it is compulsory. There is no threat, no intimidation, no coercion, no boycott, in the Gospel. Whatever a man may do when moved by a strong impulse to devote his life to the good of others, is one thing; what he will do when he finds his life forced by the judgment of the majority into certain channels, and the scope of his activities directed by the command of others, is a very different thing. Indeed, in much of this movement there lies the real spirit of the despot, and they who clamor for the control of the life of the individual by the judgment of the majority do so in the belief that their notions will be found to be the notions of the majority, and that their will is to become the controlling rule of universal life. If it be said that the many are wiser than the one, and that the welfare of all will be promoted by subjecting each life to the considerate judgment of the majority, it may be replied that the Almighty is wiser than even such majority, and He has decreed it best for man to leave each free to work out his own salvation.

I have noticed these various matters mainly to indicate the drift of present thought, and to warn against the dangerous claim that, because the Government can do some things well — better perhaps than the individual — it should undertake all things; that, because a man's life must be restrained and controlled in some things for the protection of his fellows, it can be restrained and guided in all things according to the judgment of those fellows; or, that because combination and organization give greatest strength and efficiency to capital and labor, such combination and organization may cease to be voluntary and may rightfully become compulsory and despotic; and I want to emphasize as the great truth, which humanity through all the centuries has been struggling to realize, that no man should be restrained in the full and free control of all his life and its activities, except in so far as that life and those activities trespass upon the equal liberty of his neighbor. Only one voice should be heard to say to the individual, "Thou must," and that is the voice of the Government. Only one hand of force should be placed upon the citizen, and that to restrain from wrong to his neighbor. The all-important question is not, how much better can you make a man by force and compulsion, but, how much liberty can you give him without injury to others?

In the presence of these movements of social forces I affirm that the mission of Kansas is not ended. As against them I invoke that intense longing for liberty which has been her genius and her glory. The burden of the times is upon her to show that "love thy neighbor as thyself" implies freedom for him as freedom for you; the same equal, priceless joy of controlling life and all its pursuits according to one's own judgment. And be assured that in the great outcome of the centuries the more abundant the liberty you secure to each indi-

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vidual, the swifter and the grander will be the march of humanity up the steep ascents to the mountain summits of millennial civilization.

One thing more: In the war to preserve the Union, Kansas was a leader. To perpetuate the Union is as lofty a purpose to-day as then; in the great affairs of the relations of States and their citizens to other States and their citizens, and of the relations of all to foreign nations and their citizens, there is and can be but one country and one Government. Under the protecting hand of that Government the wheels of interstate commerce must roll from ocean to ocean, stopped by no State, and blocked by no man or organization. The power of that Government must be equal to the defense of the citizen of each State from any attempted wrong to himself or property by the citizens of any other State. In this is no humiliation to State or citizen thereof, but rather the glory and strength of all. Now, as ever, the highest welfare of each lies in the permanence and prosperity of the nation as a whole. Longfellow's words are still true:

"Sail on, O UNION, strong and great!
Humanity with all its fears,
With all the hopes of future years,
Is hanging breathless on thy fate!

"Sail on, nor fear to breast the sea!
Our hearts, our hopes, are all with thee;
Our hearts, our hopes, our prayers, our tears,
Our faith triumphant o'er our fears,
Are all with thee — are all with thee!"

No one can be so blind as not to see that there are growing sectional differences. Slavery has ceased to be the apple of discord. It is no longer the South against the North. It is rather a question of wealth — of debtor and creditor — of West against the East. Firing this sectional feeling may seem but a little thing, and the possibilities of war may be laughed at, but who sixty years ago fancied that North and South would ever meet in deadly conflict? Little by little the bitterness between the two sections grew. Careless and ambitious men on either side fanned the flames of feeling until they finally burst in the awful horrors of civil war. And so this wicked and foolish cry of the tyranny of the monopolies of the East over the industrial resources of the West, of the necessity of a league of the producing and borrowing States to protect themselves against the avarice and the encroachments of the manufacturing and creditor States, may be only opening the door to a struggle in which it shall be literally true that we "wade in blood up to the bridle-bit."

No more, then, on Kansas soil of the demagogical cry of "tearing the mask from this pretense called a Federal Government"; no more appeal to sectional feeling, but more of the intense patriotism of 1861; more of loyalty to that banner we lovingly call "Old Glory"; more of that feeling which makes the heart thrill responsively to the immortal telegram of Secretary Dix, "If any man attempts to haul down the American flag, shoot him on the spot." If Kansas would be a leader in the life of the nation she must lead in the line of the most intense patriotism. When this nation was but a narrow strip along the eastern shore, Pennsylvania was not inaptly called the "keystone of the arch," an arch

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whose bases were New Hampshire and Georgia. Now, when the nation domes a continent, Kansas has become the center and summit, cap and crest of the dome. It is not geography, however, which will finally determine leadership, but position among the moral and intellectual forces which make for the glory of the nation. In the days when Athens was the eye of the world, on the summit of the Acropolis she erected to Minerva, her tutelary divinity, a lofty statue, made of the brazen arms and armor won from the Persian soldiers in the victory of Marathon. Standing on its lofty eminence, and glittering in the rays of the sun, this statue with lifted shield and spear, was the most conspicuous object in the city, visible to all coming near by land or water. It was eloquent of struggles and triumphs, and symbolic of glory. Not out of material and perishable brass, but out of her self-denials and sacrifices, out of the glorious spirit of her martyr heroes, let Kansas lift upon the domed center of this mighty nation a nobler and grander statue, one which shall express the central thought and purpose of her life, and upon whose lofty forehead shall appear the matchless words of the great defender of the Constitution, "Liberty and Union, now and forever, one and inseparable."

In the retrospect of what Kansas has done; in the shining light of her heroic endeavor, you who have been with her from the early morning, and can say with the Roman of old, *Omnia vidi et quorum pars fui*, may well exult. It is glory enough for one life to have taken part in writing such a history and working out such a destiny.

I see before me not a few who came with me hither in the dark Territorial hours. The vigor and elasticity of youth are gone, the brows are wrinkled and the cheeks furrowed, not by dissipation but by the slow chiseling hand of toil and care. Time's silver crown of glory is upon the head. You are rejoicing in a well-earned evening of rest, and are patiently awaiting the revelations of the eternal mystery. May that evening be long, and you gather again and again to exult over the realization of the motto you chose for this State, "*Ad astra per aspera*"; and when at last the night shall fall, be assured that in the glad morning up yonder Kansas will be a name of introduction and a word of welcome.

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Constitution and By-Laws.

CONSTITUTION.

ARTICLE 1. The name of the Association shall be The Bar Association of the State of Kansas.

ART. 2. The object of the Association shall be the elevation of the standard of professional learning and integrity, so as to inspire the greatest degree of respect for the efforts and influence of the bar in the administration of justice, and also to cultivate fraternal relations among its members.

ART. 3. The officers of the Association shall be a President, Vice-President, Secretary, Treasurer, and an Executive Council of five members.

ART. 4. The President shall preside at all meetings of the Association, and shall open each annual meeting of the Association with an appropriate address. The Vice-President shall preside in the absence of the President; and in the absence of both, a president *pro tem.* may be elected by the meeting. The Secretary shall keep a record of all the proceedings of the Association, and conduct the correspondence of the Association.

ART. 5. The Treasurer shall keep an account of all funds of the Association. The Executive Council shall manage the affairs of the Association, subject to the constitution and by-laws.

ART. 6. A quorum for the transaction of business shall be twenty members.

ART. 7. No person shall be admitted to membership of this Association who is not a member of the bar of the Supreme Court, and who has not been engaged in the regular practice of the law for one year next preceding his application for admission.

ART. 8. All applications for membership shall be referred to the Executive Council, who shall report the same to the Association, with their recommendation thereon; and no person shall be admitted to membership except by a two-thirds vote of the members present. Each member shall pay an admission fee of five dollars, and annual dues of three dollars.

ART. 9. The annual meetings of the Association shall be held in January of each year, at the capital, at such time as the Executive Council fix. Thirty days' notice of the annual meeting shall be given by the Secretary. Special meetings may be called by the Executive Council, of which meetings thirty days' notice shall be given to the members by the Secretary.

BY-LAWS.

SECTION 1. The Executive Council shall, on or before the first day of May of each year, designate such number of members, not exceeding six, to prepare and deliver or read at the next annual meeting thereafter appropriate addresses

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or papers upon subjects chosen and assigned by the Council to each of said members, as may be so selected for such purpose.

SEC. 2. The order of exercises at each annual meeting shall be as follows:

1. Opening address by the President.
2. Consideration of applications for membership.
3. Reports of Secretary and Treasurer.
4. Report of Executive Council.
5. Reports of standing committees.
6. Reports of special committees.
7. Delivering and reading of addresses and papers.
8. Miscellaneous business.
9. Election of officers and delegates to American Bar Association.

SEC. 3. There shall be chosen by ballot, at each annual meeting, three members as delegates to American Bar Association for the ensuing year.

SEC. 4. All addresses delivered and papers read before the Association, the copy of which is furnished by the author, shall be lodged with the Secretary. The annual address of the President, the reports of committees, and all proceedings of the annual meeting, shall be printed; but no other address delivered or paper read shall be printed, except by order of the Executive Council.

SEC. 5. The terms of office of all officers elected at any annual meeting shall begin at the adjournment of such annual meeting, and end at the adjournment of the next annual meeting. And in case of any vacancy, the Executive Council shall appoint some member to fill the vacancy, who shall hold until his successor is elected.

SEC. 6. The Treasurer's accounts and report shall be examined annually by the Executive Council before their presentation to the Association, and the Executive Council shall report the result of such examination of the Treasurer's report and accounts to the Association at its annual meeting.

SEC. 7. The Executive Council shall cause to be printed such number of copies of the constitution and by-laws of this Association, with a roll of the members of the Association, as it shall deem best, not exceeding one thousand copies, and shall distribute the same to members of the Association, and to such other persons, or associations, or societies, as they may deem prudent; and shall, with the proceedings of each annual meeting, print a roll of the members of the Association.

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ROLL OF MEMBERS.

NAME.	ADDRESS.	ADMITTED.
Abbott, A. J.	Garden City	Jan. 8, 1890
Ady, J. W.	Newton	June 4, 1884
Alden, H. L.	Kansas City, Kas.	Jan. 13, 1885
Alford, D. S.	Lawrence	June 6, 1883
Allen, S. H.	Pleasanton	Jan. 24, 1894
Allensworth, J. T.	Atchison	June 6, 1883
Anderson, T. P.	Kansas City, Kas.	Jan. 8, 1889
Angevine, C.	Mankato	June 6, 1883
Austin, Edwin A.	Topeka	Jan. 13, 1886
Austin, James H.	Kansas City, Mo.	Jan. 9, 1883
Baker, Sperry	Paola	June 6, 1883
Benson, A. W.	Ottawa	Jan. 9, 1883
Benton, C. E.	Fort Scott	Jan. 8, 1890
Bergen, A.	Topeka	Jan. 11, 1887
Berger, A. L.	Kansas City, Kas.	Jan. 24, 1894
Bertram, E. S.	Council Grove	Jan. 11, 1887
Bertram, G. W.	Oberlin	Jan. 13, 1885
Bird, W. A. S.	Topeka	June 6, 1883
Bishop, W. H.	Salina	Jan. 24, 1894
Bland, W. T.	Atchison	Jan. 25, 1892
Blue, R. W.	Pleasanton	June 6, 1883
Bond, T. L.	Salina	Jan. 13, 1886
Bone, H. J.	Ashland	Jan. 16, 1895
Bowman, C. S.	Newton	Jan. 8, 1890
Bradford, S. B.	Topeka	Jan. 3, 1888
Brewer, David J.	Washington, D. C.	Jan. 9, 1883
Brock, Robert	Manhattan	Jan. 24, 1894
Broderick, Case	Holton	Jan. 9, 1883
Brown, Milton	Garden City	Jan. 8, 1890
Bryant, A. J.	Hays City	Jan. 24, 1894
Buchan, W. J.	Kansas City, Kas.	Jan. 9, 1883
Bucher, Charles	Newton	June 4, 1884
Buck, J. Jay	Emporia	Jan. 11, 1887
Calderhead, W. A.	Marysville	Jan. 16, 1895
Call, Henry L.	Topeka	Jan. 8, 1889
Campbell, A. B.	Topeka	Jan. 12, 1887
Campbell, M. T.	Topeka	Jan. 16, 1895
Campbell, W. C.	Topeka	June 6, 1883
Campbell, W. P.	Wichita	Jan. 9, 1883
Case, George H.	Mankato	Jan. 9, 1883
Chandler, George	Washington, D. C.	Jan. 9, 1883
Clark, Geo. W.	Lyons	Jan. 24, 1894
Clarke, Fabius M.	New York City	June 6, 1883
Clarke, W. B.	Kansas City, Mo.	Jan. 13, 1885
Clogston, J. B.	Eureka	Jan. 13, 1885
Cornell, George G.	Alma	Jan. 4, 1888

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ROLL OF MEMBERS — CONTINUED.

NAME.	ADDRESS.	ADMITTED.
Cox, C. A.	Chanute	Jan. 16, 1895
Crozier, Robert	Leavenworth	Jan. 9, 1883
Cunningham, E. W.	Emporia	Jan. 8, 1890
Coleman, C. C.	Clay Center	Jan. 31, 1893
Dassler, C. F. W.	Leavenworth	Jan. 8, 1889
Daughters, C. B.	Lincoln	Jan. 16, 1895
Davis, J. W.	Greensburg	Jan. 24, 1894
Dawes, F. B.	Clay Center	Jan. 16, 1895
Day, John W.	Topeka	June 6, 1883
Devenney, A. S.	Olathe	June 6, 1883
Dolman, J. E.	Topeka	Jan. 16, 1895
Doster, Frank	Marion	Jan. 9, 1883
Douglass, G. L.	Wichita	Jan. 8, 1890
Douthitt, Wm. P.	Topeka	Jan. 13, 1885
Earle, Lucien	McPherson	Jan. 8, 1889
Eaton, Robert M.	Atchison	Jan. 8, 1889
Egan, J. G.	Chicago, Ill.	Jan. 25, 1892
Elliott, C. E.	Wellington	Jan. 16, 1895
Ellis, A. H.	Beloit	Jan. 8, 1889
Emery, R. M.	Seneca	Jan. 8, 1889
Everest, A. S.*	Atchison	Jan. 9, 1883
Falloon, James	Hiawatha	June 6, 1883
Fenlon, Thomas P.	Leavenworth	Jan. 9, 1883
Ferry, L. S.	Topeka	Jan. 25, 1892
Foster, C. G.	Topeka	June 6, 1883
Foster, F. H.	Topeka	Jan. 11, 1887
Freeman, W. H. H.	Kansas City, Kas.	Nov. 28, 1883
Freeman, Winfield	Kansas City, Kas.	Jan. 25, 1892
Frith, J. Harvey	Emporia	Jan. 8, 1889
Garver, T. F.	Salina	June 6, 1883
Getty, George	Syracuse	Jan. 8, 1890
Gillett, F. E.	Kingman	Jan. 13, 1885
Gillpatrick, J. H.	Leavenworth	Jan. 9, 1883
Gilluly, W. F.	Oskaloosa	Jan. 16, 1895
Glasse, W. B.	Oswego	Jan. 9, 1883
Gleason, H. W.	Hutchinson	Jan. 20, 1891
Gleed, C. S.	Topeka	Jan. 13, 1886
Gleed, J. W.	Topeka	Jan. 8, 1889
Godard, A. A.	Topeka	Jan. 8, 1890
Graves, Charles B.	Emporia	Jan. 9, 1883
Green, Geo. S.	Guthrie, Oklahoma	Jan. 11, 1887
Green, H. T.*	Leavenworth	June 6, 1883
Green, J. W.	Lawrence	Jan. 1, 1883
Griffin, Chas. T.*	Atchison	June 6, 1883
Grattan, G. F.	McPherson	Jan. 25, 1892
Gregg, W. J.	Frankfort	Jan. 16, 1895
Guthrie, John	Topeka	June 6, 1883
Guthrie, W. W.	Atchison	Feb. 3, 1885
Guthrie, W. F.	Atchison	Jan. 25, 1892

* Deceased.

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ROLL OF MEMBERS — CONTINUED.

NAME.	ADDRESS.	ADMITTED.
Hadley, D. B.	Kansas City, Kas.	Jan. 8, 1889
Hagan, Eugene	Topeka	Jan. 16, 1895
Hagerman, James	St. Louis, Mo.	Jan. 13, 1886
Hallowell, J. R.	Wichita	June 6, 1883
Hamble, C. B.*	Holton	Jan. 24, 1894
Hamilton, A. L. L.	El Dorado	Jan. 8, 1890
Hamilton, Clad	Topeka	Jan. 16, 1895
Harkness, F. P.	Clay Center	Jan. 8, 1889
Harris, Amos*	Wichita	Jan. 9, 1883
Harris, Vernon H.	Lawrence	Jan. 4, 1888
Harrison, T. W.	Topeka	Jan. 3, 1888
Haun, T. S.	Jetmore	Jan. 8, 1889
Hayden, Charles	Holton	June 6, 1883
Hayden, Sydney	Holton	June 6, 1883
Hayward, F. M.	Kansas City, Mo.	Jan. 13, 1886
Heizer, R. C.	Osage City	Jan. 16, 1895
Herrick, R. T.	Hiawatha	Jan. 16, 1895
Hessin, John E.	Manhattan	Jan. 8, 1890
Hick, R. S.	Westmoreland	Jan. 13, 1885
Hobbs, Bruno	Kansas City, Kas.	Jan. 24, 1894
Hogan, E. G.	Ravanna	Jan. 20, 1891
Holt, Joel*	Beloit	Jan. 3, 1888
Hopkins, Scott	Horton	Jan. 3, 1888
Horton, Albert H.	Topeka	Jan. 9, 1883
Houk, L.	Hutchinson	Jan. 9, 1883
Hudson, T. J.	Fredonia	June 6, 1883
Humphrey, H. J.*	Hutchinson	Jan. 12, 1887
Humphrey, James	Junction City	Jan. 9, 1883
Hurd, T. A.	Leavenworth	June 6, 1883
Huron, G. A.	Topeka	Jan. 8, 1890
Hutchings, C. F.	Kansas City, Kas.	June 6, 1883
Hutchinson, E.	Marysville	Jan. 4, 1888
Ingalls, Ralph	Topeka	Jan. 24, 1894
Irish, F. L.	Manhattan	Jan. 16, 1895
Jetmore, A. B.	Topeka	Jan. 11, 1887
Jewett, E. B.	Wichita	Jan. 8, 1889
Johns, H. C.*	Hutchinson	Jan. 8, 1890
Johnson, J. B.	Topeka	June 6, 1883
Johnson, W. A.	Garnett	June 6, 1883
Johnson, J. G.	Garnett	Feb. 3, 1885
Johnston, W. A.	Minneapolis	June 6, 1883
Johnston, W. T.	Paola	Jan. 13, 1886
Jones, Howel	Topeka	Jan. 8, 1890
Keeler, Henry	Topeka	Jan. 8, 1890
Kellogg, L. B.	Emporia	Jan. 13, 1885
Kellogg, Mrs. J. M.	Emporia	Jan. 8, 1889
Kelso, David	Atchison	Jan. 13, 1885
Kimball, C. H.	Parsons	Jan. 11, 1887

* Deceased.

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ROLL OF MEMBERS — CONTINUED.

NAME.	ADDRESS.	ADMITTED.
Kimble, Sam	Manhattan	Jan. 25, 1892
Kingman, Samuel A	Topeka	Jan. 13, 1886
Larimer, J. B	Topeka	Jan. 8, 1890
Lawrence, S. S	Guthrie, O. T	Jan. 13, 1886
Leland, Cyrus A	El Dorado	Jan. 9, 1883
Lewis, C. C	Phillipsburg	Jan. 13, 1885
Lewis, Ellis	Osage City	Jan. 9, 1883
Little, E. C	Abilene	Jan. 8, 1890
Littlefield, W	Topeka	Jan. 13, 1885
Lloyd, Ira E	Ellsworth	Jan. 13, 1885
Loomis, N. H	Topeka	Jan. 25, 1892
Lovitt, R. A	Salina	Jan. 13, 1886
Lowe, J. G	Washington	Jan. 16, 1895
Lowell, J. H	Holton	Jan. 16, 1895
Madden, Dennis	Cottonwood Falls	Jan. 8, 1890
Mahan, John H	Abilene	Nov. 28, 1883
Maltby, J. C.*	Minneapolis	Jan. 11, 1887
Martin, David	Atchison	Jan. 9, 1883
Martin, F. L	Hutchinson	Jan. 31, 1893
Martin, John	Topeka	Jan. 9, 1883
Mason, Rankin	Topeka	Jan. 8, 1890
May, A. R	Washington	June 6, 1883
McBride, W. H	Osborne	Jan. 25, 1892
McCammon, G. W	Valley Falls	Jan. 8, 1889
McCleverty, J. D	Fort Scott	Jan. 9, 1883
McClure, J. R	Junction City	June 6, 1883
McFarland, E. A	Lincoln	Jan. 8, 1890
McFarland, J. D	Topeka	June 6, 1883
McLean, H. A	Marion	Jan. 12, 1887
McMath, E. A	Topeka	Jan. 24, 1894
Mead, C. F	Abilene	Jan. 31, 1893
Miller, O. L	Kansas City, Kas	Jan. 8, 1889
Milliken, J. D	McPherson	Jan. 11, 1887
Mills, F. D	Kansas City, Kas	Jan. 13, 1886
Mohler, J. G	Salina	Jan. 16, 1895
Monroe, Charles	Los Angeles, Cal	June 6, 1883
Moore, H. Miles	Leavenworth	June 6, 1883
Moore, Edwin White	Chicago, Ill	Jan. 25, 1892
Moore, McCabe	Kansas City, Kas	Jan. 24, 1894
Morris, R. E	Kansas City, Kas	Jan. 16, 1895
Morris, W. H	Girard	Jan. 24, 1894
Mulvane, David W	Topeka	Jan. 24, 1894
Nicholson, M. B	Council Grove	Feb. 3, 1885
O'Bryan, Ed	Wichita	Jan. 16, 1895
Osborn, S. J	Wakeeney	Jan. 8, 1890
Overmyer, David	Topeka	Jan. 8, 1889
Patchin, A. L	Stockton	Jan. 9, 1883
Patterson, W. J	Lawrence	Jan. 13, 1886

*Deceased.

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ROLL OF MEMBERS — CONTINUED.

NAME.	ADDRESS.	ADMITTED.
Peck, George R.	Topeka	Jan. 9, 1883
Peckham, Chas. J.	Winfield	Jan. 11, 1887
Perkins, L. H.	Lawrence	Jan. 24, 1894
Perry, W. C.	Fort Scott	June 6, 1883
Pickler, R. M.	Smith Center	Jan. 24, 1894
Porter, Silas W.	Kansas City, Kas.	Jan. 3, 1888
Powell, Omar	New York City	Jan. 3, 1888
Prescott, J. H.*	Salina	Jan. 9, 1883
Price, Francis C.	Ashland	Jan. 25, 1892
Pringle, J. T.	Burlingame	Jan. 24, 1894
Quinton, A. B.	Topeka	Jan. 4, 1888
Quinton, E. S.	Topeka	Jan. 4, 1888
Radcliff, H. J.	Cottonwood Falls	Jan. 8, 1890
Randolph, A. M. F.	Burlington	Jan. 25, 1892
Redd, George S.	Denver, Colo.	Jan. 8, 1889
Redden, A. L.	El Dorado	Jan. 13, 1885
Reed, W. T.	Kansas City, Kas.	Jan. 16, 1895
Rees, James M.	Kansas City, Kas.	Jan. 24, 1894
Riggs, S. A.	Lawrence	Jan. 13, 1886
Rightmire, W. F.	Topeka	Jan. 8, 1890
Roark, Wm. S.	Sharon Springs	Jan. 25, 1892
Roberts, John W.	Hutchinson	Jan. 25, 1892
Robinson, E. F.	Osborne	Jan. 8, 1890
Robinson, R. G.	Holton	Jan. 11, 1887
Rossington, W. H.	Topeka	Jan. 9, 1883
Root, H. C.	Topeka	Jan. 8, 1889
Rutter, John N.	Columbus	Jan. 16, 1895
Scott, Henry W.	Guthrie, O. T.	Jan. 8, 1889
Scott, W. W.*	Emporia	Jan. 9, 1883
Seabrook, S. L.	Topeka	Jan. 13, 1886
Sedgwick, T. N.	Emporia	Jan. 8, 1889
Seaver, B. A.	Troy	June 6, 1883
Shafer, J. D.	Leavenworth	June 6, 1883
Shartel, John W.	Guthrie, O. T.	Jan. 25, 1892
Sheridan, John C.	Paola	Jan. 13, 1886
Simpson, B. F.	Paola	June 6, 1883
Sluss, H. C.	Wichita	Jan. 9, 1883
Smith, C. B.	Topeka	June 6, 1883
Smith, Charles W.	Stockton	Jan. 13, 1885
Smith, Clark A.	Cawker City	Jan. 9, 1883
Smith, Wm. R.	Kansas City, Kas.	Jan. 13, 1886
Smith, W. W.	Topeka	Jan. 13, 1885
Snoddy, J. D.	Pleasanton	Jan. 9, 1883
Solomon, H. C.	Atchison	Jan. 24, 1894
Spencer, Chas. F.	Topeka	Jan. 4, 1888
Spencer, James M.	Topeka	Feb. 3, 1885
Spilman, R. B.	Manhattan	Jan. 24, 1894
Stackpole, Henry W.	Clay Center	Jan. 20, 1891
Stambaugh, W. S.	Abilene	Jan. 20, 1891

* Deceased.

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ROLL OF MEMBERS — CONCLUDED.

NAME.	ADDRESS.	ADMITTED.
Stephens, N. T.*	Lawrence	Jan. 9, 1883
Stevens, Hiram	Paola	Jan. 13, 1886
Stillwell, L.	Erie	June 6, 1883
Strang, J. C.	Guthrie, O. T.	Jan. 9, 1883
Sturgis, F. W.	Concordia	Jan. 9, 1883
Summerfield, M.	Lawrence	Jan. 4, 1888
Sutherland, J. W.	Neodesha	June 6, 1883
Switzer, John F.	Topeka	Jan. 16, 1895
Taylor, Irwin	Chicago, Ill.	Jan. 13, 1886
Thacher, S. O.	Lawrence	Jan. 9, 1883
Thompson, J. F.	Sabetha	Jan. 25, 1892
Thompson, L. H.	Norton	Jan. 8, 1890
Thompson, R. F.	Minneapolis	Jan. 25, 1892
Thomson, William	Burlingame	Jan. 24, 1894
Tillotson, D. C.	Topeka	Jan. 8, 1889
Tomlinson, J. C.	Atchison	Jan. 13, 1886
Troutman, J. A.	Topeka	Jan. 12, 1887
Tufts, J. F.	Atchison	Jan. 16, 1895
Valentine, D. M.	Topeka	Jan 9, 1883
Vance, A. H.	Topeka	Jan. 16, 1895
Vandeveer, G. A.	Kansas City, Mo.	Jan. 8, 1890
Vandivert, S. W.	Kinsley	Jan. 25, 1892
Waggener, B. P.	Atchison	June 6, 1883
Wagstaff, W. R.*	Paola	Jan. 9, 1883
Walker, Will T.	Kansas City, Kas.	Jan. 16, 1895
Wall, T. B.	Wichita	Jan. 8, 1890
Walrond, Z. T.	Muscogee, I. T.	Jan. 11, 1887
Ware, E. F.	Topeka	June 6, 1883
Waterbury, Ed. S.	Emporia	Jan. 13, 1885
Webb, L. J.*	Topeka	Jan. 4, 1888
Webb, W. C.	Topeka	Jan. 9, 1883
Webb, W. D.	Atchison	Jan. 13, 1885
Webster, Chas. W.	McPherson	Jan. 25, 1892
Welch, R. B.	Topeka	Jan. 8, 1890
Wells, Abijah	Seneca	Jan. 8, 1889
Wheat, L. B.	Leavenworth	June 6, 1883
White, J. M.	Howard	June 6, 1883
White, T. J.	Kansas City, Kas.	Jan. 20, 1891
Whiteside, H.	Hutchinson	Jan. 20, 1891
Wilcockson, K. E.	Oakley	Jan. 8, 1890
Wilder, George C.	Manhattan	June 6, 1883
Williams, A. L.	Topeka	Jan. 31, 1893
Williams, F. L.	Clay Center	Jan. 31, 1893
Wilson, E. G.	Topeka	Jan. 16, 1895
Winslow, C. S.	Marion	Jan. 20, 1891
Wolfe, Eugene	Topeka	Jan. 25, 1892
Wood, O. J.	Topeka	Jan. 25, 1892

* Deceased.

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THE BANQUET.

The sumptuous banquet spread at the Hotel Throop, given by the Association to its members and guests, was a fitting close of this very successful meeting of the State Bar Association. The following responses were given to the toasts offered. The President, H. L. Alden, was the entertaining *magister convivii*, prefacing each toast with a happy and appropriate introduction.

JUSTICE DAVID J. BREWER—"*The Federal Judiciary.*"

Mr. President, and Fellow-Lawyers: After taking up so much of your time last evening, I ought to be excused from any further trespass upon your attention. If I attempt to make a speech, I fear you will all say of me that which a little girl, the daughter of the Clerk of the Circuit Court in St. Louis, once said. During my first term in that city I called at his house, and made rather a long visit, the daughter being in the room all the time. The next term I again called, and when her mother proposed to bring the child in to see me, she objected. The mother said, "Don't you like Judge Brewer?" "No, I don't like him!" "Why not?" inquired her mother. "Because he talks too much," was the suggestive reply.

I notice that your President proposed the toast to which I am to respond in the beverage that is said to be so popular in Kansas. It was one of the current jokes in Washington when I first went there, that the President intended to make the Supreme Court full by putting a Brewer on the bench. The only reply I could make was that no matter how successful I might be with any of the associate members of that court, and no matter how full any one of them might become, the Chief was always Fuller.

I believe that every full-blooded American boy has an ambition to become a statesman; that at some time in his life he feels sure that his future leads up into the line of political life. I remember that in my early days I had that ambition, and I thought that nothing would satisfy me better than to come to the Legislature of this young but growing State. When the convention was called to nominate a candidate, I consulted the delegates, and was assured by more than a majority of them that I was the very man they thought ought to represent them in the Legislature. So I went to the convention with great spirits and large expectations, but when the result of the ballot was announced I found I had received but one vote. Somehow or other there must have been

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on the part of the delegates a strange misrecollection of the assurances they had given me, or else on my part an equally strange misunderstanding of the scope of those assurances. I was not happy; I felt that the breaking of the third commandment was a pardonable offense, and I fully appreciated the remark of the distinguished elder in the Presbyterian church who once said to me that a man cannot be a good Christian unless he occasionally says — well, you know what.

I have sometimes speculated on what would have been the result had I been successful in then coming to the Kansas Legislature. Who knows but that at this hour I might have been a Congressman, or possibly, like many distinguished members of our profession in this city, even now on the anxious seat of great possibilities? But, according to good old Calvinistic doctrine, I was not foreordained to become a politician.

I believe I can say that I am the oldest judge of Kansas. I have had the longest judicial life of any citizen of this State — long enough, I assure you, to go through one trial of the Hillmon case. Last night, at the charming entertainment given at the club house, I noticed how merrily and lightly my distinguished and youthful friend from Dakota, Judge Thomas, was moving around among the beautiful ladies, and I was confident that he did not realize that he had entered upon the last work of his life. Some day, when the youngest of these young men have gray hairs upon their heads, some day in the distant future, as they walk down Kansas avenue, they may see an old gentleman coming out of the Government building, and hear him say, in feeble tones, "Thank Heaven, I have finished the Hillmon case!"

Thirty years I have been a judge of a court of record. No other man in this State can claim as long a service. Few men in the United States have had as long, and I think it is very doubtful if there is a single one who has had a more varied career on the bench than I. There is scarcely any judicial position which I have not filled; scarcely any service in the profession which I have not been called upon to discharge. I have been a judge of an exclusively criminal court, of a probate court, of the court of original jurisdiction in the State, and of its Supreme Court; Judge of the Circuit Court of the United States, and Justice of the Supreme Court. In addition, I served on a petit jury, was once foreman of a grand jury, have been U. S. Commissioner, and prosecuting attorney, to say nothing of filling up odd times with such little services as master in chancery, and the like. And now, looking back over my life, notwithstanding all that there is attractive in a political career, I am very sure that I do not regret the result of that convention. While a life on the bench is not one of great display, while a judge is never greeted with brass bands and torchlight processions, he is, as those of you who were present last night can testify, sometimes welcomed with the most delightful receptions. My life has been singularly pleasant in this, that in whatever position I have held, and wherever I have been, I have been surrounded by warmest and kindest friends. My life has thus been made very sweet, and no man can look back on such a life and recall all the pleasure it has held for him, without the grateful thought that it is to friends and friendship he owes so much.

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Life on the bench is in one sense a difficult life. It is one that is not compassed wholly by what is visible in the daily work of the court-room. It has more in it of the life of the student, whose toil is unseen, whose work is in the still and quiet hours when no man sees what is going on. It is full of responsibility. No man fit to be a judge ever enters upon the discharge of his duties without feeling that there is laid on him a burden of responsibilities greater than that placed upon others. It is not with him the mere giving of so much to the plaintiff, or of so much to the defendant; not the mere earning of the bread and butter and support for himself and family. No one has any adequate idea of the responsibilities of such a life; no one fully discharges its duties without realizing day by day that he is a priest ministering at the most sacred altars — nay, more, that he is doing something towards building that lofty temple of justice which will one day fill the earth. The building of that temple may be compared to the slow changes by which man has moved up from barbarism to civilization. The completion of that advance has not taken place in a day. No one has become a refined and cultivated gentleman by an instantaneous movement. Slowly through the centuries the process of change has been going on, and each one who has faithfully discharged his duty in the world has done something to bring about the grand result. And so, every judge who has loyally performed his work has added something — whether it be little or much — to the great structure of jurisprudence. Little by little the temple of justice is growing in the world; little by little man is coming to realize that the one thing which will bring peace and order everywhere is the firm, clear and unhesitating administration of justice in the courts. Little by little the world is coming to appreciate the fact that every member of our profession, whether on the bench or at the bar, who conscientiously performs his duty in his appointed place, is adding something to the glories which the future will yet reveal.

I did not intend, when I arose, to say so much, and I must apologize for having departed so far from the toast assigned to me; and yet I want to say one thing more. In no country in the world, under no form of government, is a firm, strong, stable judiciary more needed than in a "government of, by and for the people." The legislator and the executive do their duty rightfully when they represent the party which has elected them, and realize its wishes in all their official acts. They represent parties, and carry the will of the majority into statute and action; but the judge represents no party, no majority. He stands, and should stand, entirely independent of all organizations, parties, and political creeds, initiating no policy, prescribing no rules for the future, standing only to determine what is right and justice between man and man, and to measure all the actions of individuals, all the laws of legislatures, and all the deeds of the executive, by that organic instrument, the Constitution, which the people have established as the inviolable rule of action. It is sometimes thoughtlessly said that judges act as though the people were not to be trusted, and as though they were endowed with a wisdom superior to that of others. This is a most unjust imputation. The people are to be trusted — no question of that. But it is the long thought of the people, as deliberately put into the organic instrument, which is to control, and not the short thought that under

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the pressure of temporary feeling or momentary passion may find expression in legislative action; and it is the peculiar function of the judge to uphold the one as against the other. And thus it is that he more than any other helps to preserve government of and by the people, and prevents it from degenerating into a mere government of and by a mob. Thus it is all-important in this Republic of ours that there should be a firm and stable judiciary to stand between the temporary wave of public feeling and the permanent and thoughtful purpose of the Nation as expressed in those grand instruments which contain the measure of all rights and the abiding guarantees of justice and equity.

I thank you, my brothers of the bar, most heartily for this cordial welcome. My wife said to me, when I left Washington, "Dave, you are going a great ways for two days—riding 1,500 miles in the cars for only two days." I think if she had been with me these two days, and had seen this royal greeting, she would say, "You might well have traveled three thousand miles."

JUDGE ALFRED D. THOMAS, North Dakota—"*Some Remarks.*"

Mr. President, and Members of the Bar Association of Kansas: I think it very fortunate that you had a toast-master who knew how to arrange subjects. The subject assigned to me reminds me somewhat of a physician I once employed, when I was younger than I am now. After looking me over and making a sort of a diagnosis, as he called it, of the case, he said he had two classes of prescriptions—one a specific, and the other general; that I must be either affected by malaria, or some other trouble that it was difficult to ascertain, for which he would give me a general prescription. I notice the gentleman has given me a general subject.

I was very much impressed by the beauty of the Federal judiciary, as presented by the distinguished Circuit Justice. But I want to say—and that is all that I will say to you, except to thank you for the honor of the invitation here—I want to say, to any young man who has aspirations to become a Federal Judge, or a United States District Judge, that it is not all loveliness. There is a Circuit Justice above you, and a Circuit Judge; there were these two officers when I came into the office. Now I do not want to charge anybody with any wrong, but I want to say here that, in the very first instance, almost, I was the victim of a conspiracy. I have been informed by a recent decision of the Supreme Court that in order to prove a conspiracy, it is not necessary to show by direct evidence that the parties actually came together and entered into an agreement or combination, but that the agreement may be implied from all the facts and circumstances. Now I wish to submit the following facts to you in order that you may draw the proper inferences: A short time after I was appointed, I received a letter, a very gentlemanly letter, from Judge Caldwell, saying that he was very much engaged, and that he understood that I had had some little experience in mining law, and that he would like me, if I had time, to go over to Colorado and try a mining case, a little mining case, over there, as a personal favor. I wrote back, saying that it was out of my district; that my bar was a young bar; that some things would have to go over if I left, and that it would be impossible for me to go. I received a telegram in reply, "You

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must go," a little emphatic—and I went. I found that the Circuit Justice had been there and looked over the case, and made some order or other in regard to the pleadings which necessitated a continuance over the term. Subsequently the Circuit Judge came along and made some additional order, and that necessitated another continuance. And then came this letter. I went out and saw Judge Hallett. He did not know much about the case. I talked with the clerk; he did not know much about it, and I could not find out much about it. The trial began. It soon developed that it was a most complicated case; all the difficult questions of mining law were involved in it, and I was detained on that case over four weeks. Fortunately, the distinguished Circuit Justice never had a chance to review my rulings, for the jury disagreed. Now, you may draw what inference you please.

The next experience: I received a very gentlemanly note from Judge Sanborn, June last, stating that Judge Foster was ill, and that there was some business, some little business to attend to at Leavenworth, and he would like for me to go down; would not have to be there over six or seven days. I went. I was confronted at first by two hundred and fifty brawny and determined Coxeyites and some other cases, which took up my time in holding a prolonged session of three long weeks. I was invited by two Circuit Justices to come down here, saying it was a warm and beautiful climate—finest country down here; a little case—would have no difficulty, but did not know much about the merits of it. We did not take many newspapers in North Dakota, hadn't heard much about it up there, and so I came down to preside in the Hillmon case. I have now requested attorneys to so arrange matters that I can be at home in time to deliver my celebrated 4th of July oration. That is all I ask.

I wish to say another thing that occurred to me in the trial of this case. Somebody said, or I read somewhere, that the celebrated lawyer, Rufus Choate, one time when he had a celebrated case before the Supreme Court of Massachusetts, occupied most of the day in discussing and reviewing the elementary principles of law. At the close of the day, Chief Justice Shaw stated to Mr. Choate, "You ought to presume that this court knows some law." "Your honors," said Mr. Choate, "I went on that assumption in the court below, and got left." I simply want to say that the attorneys in the Hillmon case are not making that mistake.

I hope I shall have the pleasure of meeting you some other time. I have been cordially received by the bar, so far as I have met them, and my stay here has been very pleasant, and if I ever have an invitation to come to Kansas again, I shall accept that invitation. I regret very much, as you all do, that the District Judge who presides in this district is unable to hold court at all times, and I believe every member of the Federal judiciary is willing and anxious to come, if necessary, to relieve him, until he shall have fully recovered his health.

T. F. GARVER—"*Bench and Bar.*"

Mr. President, and Gentlemen: I have been invited to say something upon this occasion on the subject, "Bench and Bar." While the text for my remarks

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has thus been assigned to me, the method of treatment has not been indicated, and in this respect my mind may roam at its will.

For a quarter of a century I have been a co-worker with my brethren of the law at the Bar, during that time experiencing the usual ups and downs with the Bench. It is not often we are afforded the opportunity presented to-night, of having the last word when we attempt to measure opinions with those clothed with the ermine, or to tender to them on behalf of the Bar such wholesome advice and counsel as the exigencies of cases often demand. When the golden opportunity thus presents itself, without right of objection or appeal, the temptation is strong to utilize it in the demonstration of a fact sometimes overlooked, that Bench and Bar alike are composed of men and lawyers having common aims and purposes.

At this late hour, however, I will not trespass upon your patience otherwise than by brief reference to a few practical matters, which are, at this time, of genuine concern to every lawyer, and to every patriotic citizen.

Judges and lawyers, the two great factors in the courts, are correlative forces in the nation. They have a distinguished lineage, and occupy a place of wonderful influence for good in the history of the world's progress to a higher civilization. The just judge has been the recipient of the approval and commendation of every age. In him, rectitude of conduct and honesty of judgment have been higher marks of distinction than mere learning. Likewise, the choicest and richest compensations ever received by the true lawyer are those found in the appreciation of men for faithful, devoted, and wise service. To no other class of men have ever been intrusted such vital and important interests as have been safely confided to our brethren of the bench and bar. Weak ones, unfortunately, have stood in our ranks, in some instances yielding to influences which have led them into wrong-doing, and even crime. Unworthy, weak and vicious ones have worn the ermine, and profaned the temple of justice. But these cases have been so exceptional that they serve to only the more forcibly emphasize the truth that the courts are well deserving the confidence of the people; that the bench is occupied by men who are upright and learned, in whose hands the scales of justice are equably poised; and that the lawyer at the bar has no higher inspiration to duty than the cause of his client. Such is the record, and we may indulge in a commendable pride as we see how few are the blots upon its pages.

Thus have grown into the lives and daily thoughts of the people a respect for the courts, and a confidence in the just administration of the law by them, that, in my opinion, have done more than any single cause in the establishment of free government, and in giving safety and stability to its institutions. Men with rights to be protected, or with wrongs to be redressed, have turned to the courts for relief as readily and as trustingly as does the hurt child to the arms of the loving mother for sympathy and cure. Show me a people who are always ready for revolution, where domestic violence and discord abound, and I will show you a people who have no hope or promise of securing a just settlement of the differences of men through judicial methods. There can be no divorce-

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ment between free government and a judicial system in which the courts stand as great pillars of strength because of the support they enjoy from the people.

One fact I wish to emphasize this evening, and impress upon your minds. It is this: At the present time there is a seeming disposition on the part of some persons, without just cause, to poison the minds of the people against the courts, State and Federal, and to destroy the respect with which judicial tribunals have been uniformly regarded, and undermine the confidence, always expressed, in judicial utterances. Small men from high places hurl anathemas and maledictions down upon the Bench, in season and out of season, as though to annihilate it by the very abundance and vehemence of their denunciations. There seems at times to be an insatiate malice in the hearts of some classes of men that feasts and fattens on damaged reputations. That a victim is needed, is sufficient excuse to cause its venomous fangs to fasten upon the characters of men as far above their traducers as are the pure, healthful breezes of heaven above the dark, poisonous vapors of the sewer.

Those of you who have borne the responsibilities of the Bench, and felt the burden of high duty, know how valuable to the courts are the respect, the confidence, and the appreciation of those who seek therein the adjustment of rights and the redress of wrongs. It is of far more worth to the Judge, that his decisions be received as the results of his best, honest judgment, than that they should be legally correct.

As lawyers we bear glad testimony to the integrity, the fidelity, and the learning of the Bench. As good citizens, having at heart the public weal, we owe it to ourselves and to society to vindicate the judiciary from false and malicious accusation, and to foster and strengthen in the minds of the people respect for, and confidence in, the courts, well knowing that such respect and confidence are the foundations upon which rests and depends willing obedience to the law, and consequent good government. This much the Bench merits by able, faithful service. Less than this the Bar, with proper regard for itself, cannot give.

ED. O'BRYAN—"*The Lawyer in Politics.*"

Mr. President, and Gentlemen of the Bar Association: It has been my experience that "The Lawyer in Politics" would be much better off from a financial point of view, if the lawyer was "out of politics." This refers, however, to "The Lawyer" who, either by mishap or knowingly, and with malice aforethought, enters the political arena, and not to that politician who was admitted to the bar simply as a stepping-stone toward becoming a politician; whose shingle swings idly in the breeze, and whose office, if he has one, is simply the meeting-place of the political rounder and the ward heeler. But the man who has studied law, and become well grounded in its intricacies and its principles, should keep upon the straight and narrow path of the practice of his profession, "which leadeth not to destruction," but always to the everlasting dollar of his clients. Lord Bolingbroke, I believe it was, when asked for the definition of the word "lawyer," defined it thus: "A lawyer is a learned gentleman who rescues your money from your enemies and keeps it

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himself." But Lord Bolingbroke must have formed his opinion and framed his definition to fit those lawyers whose practice extended only to expounding the principles of law in the same manner that Josh Billings would give advice. He would first find out the advice his client wanted, then give him that advice and none other, and he would go away feeling that two of the greatest men on earth had met. Or perchance Lord Bolingbroke may have been in chancery at some of the different phases of *Jarndyce vs. Jarndyce*, and derived his definition from his experience. Be that as it may, it stands as a record of undoubted veracity that a vast majority of men in political life are, or at some time in their lives have been, lawyers; and I believe that the delegation from the great State of which we are all proud, whose territory stretches east from the foot-hills of the Rocky Mountains to the banks of the Missouri river, four hundred miles — our own agricultural State of which we are all proud — to the lower house of the next Congress, consists wholly of and who are, lawyers. And although Kansas is purely an agricultural State, her people, I believe, have made no mistake in electing men to Congress who are versed in the principles of law. It makes no difference in what community a lawyer may reside — commercial, agricultural, or social — sometime in his career he becomes afflicted with the mania to represent a constituency in political life.

This comes to the lawyer as an affliction, with no "healing on its wings." The lawyer can't help it. It is the natural channel which his course must run; it is the river to the ocean of his life. Those who escape the dread disease are few and far between, and are examples of political hacks. Bright and brainy men who have fallen by the wayside, whom the priests and Levites of their former constituency have passed by on the other side, whose profession is gone, whose political career is ended, as his must surely end, serve as no warning for him. The fascination in the majority of cases is too great. If politics is an "iridescent dream," he wants to try the power of his dreaming — and the sooner the better.

This disease is liable to leave scars — marks of its ravages, which will not wear away unless the lawyer gets it young, and in order to cure it is compelled to take a good old-fashioned allopathic dose of public defeat, which will burn and purge his system of all political impurities, and destroy, as it were, the very germ of the disease. He may not like the dose at first, but the more he reflects upon its effect, the more he will feel that it was the best thing that could have happened him.

I do not mean to be understood as saying that lawyers in politics are inferior beings to their brothers at the bar whose watchword is work, work, and who have no desire to enter politics: far from it. They are a necessary quantity in formulating the principles of government and building the bulwarks of the ship of state. The judicial mind cannot become narrow and contracted by a knowledge of the legislative department of government. A necessary service can only widen and deepen the channel of judicial thought and action, and unless the muddy waters of politics enter into and contaminate that channel, judicial thought and action will only be the clearer, the stronger, the purer, for the experience.

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The lawyer who enters political life—and he never does it from necessity, but always from opportunity, and sometimes creates the opportunity—who desires to retain his prestige before the bar, his power before the people and his honor before mankind, should have all the qualifications of the offspring of the Palm and the Pine:

"He knew the depth,
And knew the height,
The bounds of darkness
And of light,
And he who these extremes has seen
Must needs know all that lies between."

He must be as meek and lowly as He who said, "Suffer little children to come unto me, for of such is the Kingdom of Heaven."

Then he will be the exponent of all the "Lawyer in politics" should be, a citizen, a lawyer, a legislator, a man, proud in the strength of his own capacity; whose love for his fellow-man, the constitution of his country and the God of his fathers will be his aim, his hope, his life; who will need no urging to do right but his own conscience, and the burden of whose song shall always be, not "The Song of the Shirt," but the "Song of the Ship":

"Build me straight, O worthy Master,
Staunch and strong, a goodly vessel,
That shall brave each fresh disaster,
And with wave and whirlwind wrestle."

And then you will have the true lawyer in politics.

W. A. CALDERHEAD—"*Our Clients.*"

Mr. President, and Members of the Bar Association: After the generous flow of wit which we have just listened to, I feel very loth to disturb you by the remarks which I shall probably make. The truth about it is that I feel embarrassed by this great crowd of men and this abundant display of the essential part of life. Although you deem it necessary that I should relate some experiences that have happened to me elsewhere, I think, perhaps, when I am through, you will agree with me that the results of the experiments should not be repeated, and that I will not again trouble you with the pain that I am now about to inflict upon you. Whoever arranged this literary treat was somehow or other successful in shifting the center of gravity to some point below the belt line, and has not left me in a very good condition for entertaining you.

There was once a justice of the State of Kansas who said that a man's habits depend largely on the character of his feed, and some man who was in the habit of rich living has certainly arranged this supper; and I think he must have done it perhaps, for there are some kinds of feed that disqualify a man for telling the truth, the whole truth and nothing but the truth. I think that it may be fortunate for our clients in this instance, for of the great majority of them the worst thing that could be done would be to tell the truth about them; at least it is a thing that they would be the least disposed to have done. I do not know just why I could have been asked to tell you about "our clients," when it is an established rule that we ought not to violate confidential relations

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of that kind. I do not think that I could tell our brethren here anything about our clients, specifically. I hope that all have them; I hope that all know something of the clients they do have, for in the great aggregate they come to us for nearly every purpose in life. They ask us to sympathize with them in their troubles. They ask us to lay aside our conscience and without conscience to assist them in doing wrong. They ask us to work out their vengeance for them on the weak and the unfortunate, and on those who fall behind in the race and conflict of life. Yet those same clients have been created for our support, who have neither conscience nor support without them. By thus getting together all these, we make up that great aggregate called our clients. They ask us to protect and defend them against wrong-doers, and then come to us to try and get us to aid them in perpetrating a wrong. They ask that we shall be not only what we are, professional ministers of the law, but that we shall carry out wicked schemes for them, in order that they may do wicked things and consider them righteous.

It seems to me remarkable that we should be asked to say anything about our clients, when they have no opportunity to tell us what they think of us; so I think I shall not endeavor to tell you anything about them. But, as you have been reminded about the place which the great judiciary occupies in a government like ours, of the people, by the people, and for the people; just as you have been reminded by our distinguished brother over there [indicating Mr. O'Bryan] of the place that the lawyer occupies in politics, and in framing and making the law, by far the largest portion of the knowledge of our people is concerning our Government—its powers and its duties, and their rights and their relations to it; and the lawyer is the one who interprets it for them. It is his familiarity with the Government and its forms and construction that qualifies him for these duties as an individual and citizen of such a great nation as this. I notice in some of the remarks, and I think in all of them, indications that the lawyer's relations to his client are those of business. But they are more than business. Business is something that deals with property and relates to it. Ours is a profession which deals with humanity, and while there is a business relation between every lawyer and his client, it is not very specific, because there is that higher relation between every lawyer and his client which is entirely professional. It seeks, in some way or other, to make them man and man, in whatever position they may be found; it seems to restrain whatever evil there is in that man, and lead him nearer that line of righteousness which every minister of justice is trying to follow; and to follow that line of righteousness we can have but two criterions by which we can measure our conduct: that law which we have set up, and by which we endeavor to direct our conduct, and beyond that that highest of human tribunals, our own hearts.

I know I am wandering away from "Our Clients." I could not give you any information concerning them, nor could I give you anything of them that you do not know; but I can ask you to remember that it is in your relations to your clients as professional ministers of eternal justice that you render the largest good to humanity and perform your greatest labors. I do not know that I could say anything further to you. I think it is sufficient that I have re-

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minded you of those relations which must always exist between you, and which will always prevent your relations with your clients from becoming entirely commercial relations; which will enable you to preserve the honor; which will enable you to distinguish good from evil; which will enable you to maintain the place which our social life has given to you, and the duties which it requires from you. More depends upon you than the mere success of a business or a political life. The purpose of the Nation, as it marches onward from year to year, depends upon the manner in which you conduct yourselves toward your clients. It is not what they say, not what they do, not what they think, but what you lead them to think, that constitutes them righteous citizens of a righteous nation.

I thank you for your attention.

CLAD HAMILTON—"*Our Legal Alma Mater.*"

Mr. President, and Gentlemen: When the Executive Council honored me with an invitation to appear before this distinguished organization and contribute a few ideas upon the subject of "Our *Legal* Alma Mater," I construed their invitation to mean that my observations should be directed toward the professional alma mater of a lawyer, and not toward those institutions for mental, moral and physical improvement, which are created, maintained and regulated by the law of the land. This construction may be an unwarranted one, but, for reasons of my own, I prefer it to any other. Not being a member of the alumni association of any reform school or work-house, I am not very well fitted to talk on those establishments, anyway. Now, possibly I am not using the Council justly in this matter, and maybe they desire that my remarks should be devoted to those institutions of learning, created by law, which snake the young idea unceremoniously away from the cares of a busy world, and teach it, by practical demonstration, not to shoot with too much precision lest there should be somebody hanged, and that it is not wrong merely, but eminently injudicious as well, to violate those high and noble precepts promulgated by the Legislature under the head of "Crimes and Punishments." If I have misapprehended the wishes of those gentlemen, I trust that they will pardon my obtuseness and permit me to go on with my observations according to my preconceived plan. You will readily understand that it would be exceedingly awkward and inconvenient for me to change it at this late date. I always did hate to recast a carefully prepared impromptu speech at the last moment.

A good lawyer—and I am assured by all the members who have so far expressed themselves in my presence, that this organization is composed exclusively of such—has two alma maters; and both are necessary to his professional education. The first is the law school.

At the beginning of your career as a law student, you ordinarily attended the law school, and if you are a Kansan, and a patriotic one—as I was, and as I hope I am now—and if you prefer real learning to the supposed reputation and the embossed degree with a pink ribbon down in front which are to be obtained from an Eastern school, you attend the law department of the Kansas

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State University. At the law school you read a considerable number of text-books, and a good many cases, and listen to lectures, and have class politics; (some lawyers will insist upon getting into politics, even before they have business to neglect;) and you wish you were in the practice where there is more excitement and larger opportunities to raise money and elevate the profession. At least, most of the boys desire to elevate the profession, and to be a credit to it. I did know one fellow, though, who said, even before he left the law school, that he proposed, when he got into the practice, to do anything for money. But his health has always been bad. He had not been out of the law school a year before I heard that he was confined to his room over here at the corner of Fifth and Van Buren streets—for ninety days, I think it was. So he has not as yet been able to dislocate very much property belonging to anybody else; and so far he has not had any occasion to violate any of the provisions of the income tax law.

When examination days approach, you stay up nights, and walk the floor, and study, and try to cram your head so full of information that it would, if you succeeded in getting it in, make you a blockhead for the rest of your natural-born days—and now and then you succeed; and when the examination days arrive you find that there are one or two things that you know, and two or three that you are tolerably certain about, and a great many that you guess at. At the law school, you learn a little something about the Magna Charta, which in after life you always refer to in an impassioned tone of voice when you argue an *habeas corpus* case for a moral cripple who inadvertently gets into jail. It seems to me that I have never heard a *habeas corpus* case argued in which the attorney for the corpus did not tell the judge a few things about the Great Charter; and I suspect, if they were pinned right down, that there are a very considerable number of lawyers who really do not know any more about it than they do about the Lord's Prayer.

Along toward commencement day you have the class picture taken, in which each member appears in a Prince Albert coat, and assumes a Websteresque or Calhounic attitude; and each one thinks how proud somebody will some day be to own that picture, when he forecloses his first mortgage on the top round of the ladder of Fame and goes up there to live. Then you have a row over the selection of the class representatives on commencement day. That is a regular feature. It is not mentioned in the catalogue, but it is never omitted. If the faculty appoints the speakers, there are cries of "favoritism." If the class elects, there is a howl about a "scheme," and "politics." For myself, I may say that I was neither a favorite nor a schemer; when I graduated I was not permitted to inflict upon an audience any of the sort of punishment which you, gentlemen, are now receiving. I was pretty mad, of course; I felt, as did each of the other members, that I was about the best man in the class, and it seemed to me that merit deserved recognition. But I am one of the conservative sort of men who vote the Republican ticket because their fathers did before them, regardless of who is nominated for Senator. So I did not bolt, nor refuse to graduate. After the portraits in Prince Albert coats are produced, and the

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class-day row has regularly culminated, you graduate, and get a nice, big piece of parchment, with words on it, as a reward of merit.

Then you take a change of venue and go over to the other school. That is the school of experience, and it is the one about which I am best informed. Having graduated from it many years ago, I am naturally familiar with its modes of instruction. It gives me great pleasure to be able to tell you something about it.

In that school every man whom you meet is an instructor, and each one has something to give you for your money. Their prices vary, but they collect as they go along. They are of all grades of society, ranging from the magnetic healer from the Second Ward, who has been elected constable by reason of his personal merit and a pious life, up to the intellectual giant with three names, and creases in his trousers. Sometimes you get a little experience for a couple of dollars or so, and then again you get experience which shifts the title to a corner lot. You don't have to pass an examination to be admitted, but I once knew a man to meet with a very disastrous examination after he got in—it was a preliminary, and he hasn't got back yet.

There is always an instructor a block or two from your office who is willing to brace you up on the subject of "Pleadings" or "Titles to Real Estate," or anything like that. Of course he expects your client to pay for it; but that is all right. You can't expect to get things unless somebody pays for them.

They have, in that school, a department which is called, for the sake of distinguishing it from other departments, a Court of Justice. There is always an immense number of instructors in that department, and they are just looking for chances to educate you. If you file a paper which is not in due form of law, some of them will almost always call attention to it—usually he makes his criticism upon a piece of paper, and leaves it around somewhere where the court can find it. Then the court lets you correct your paper. A short time ago I filed a petition in which I asked the court to please foreclose a mortgage, and sell some land. An instructor up here on Kansas avenue said that there were some things about my petition which he didn't like, and suggested that the court have me correct it. But the court was not so fastidious; said that the petition suited him all right, if I was satisfied with it—which I was—and the instructor got ten days to plead. That was where the instructor got the experience. But more often the instructor is right, and when he is, he educates you lots, and does it cheerfully. You never saw such a cheerful lot of instructors as they have in the school of experience; and they are very accommodating, too. They will do anything for you, 'most; if your physical proportions are not just right, they will lengthen out a limb for you at any time. It is all right with them. I think their cheerfulness is due to their good health. They are all in perfect health; so far as I have been able to ascertain there is not one of them who is here for his health. In this school the emery-wheel of reality is applied to your character; if it will stand a high polish, it becomes brighter and better, as time rolls on; if it is without merits, it is soon ground to dust.

In both of these schools, however, the purposes are the same, though the

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modes of instruction so widely differ. Each helps to fit you for the practice of your profession, and for the performance of the duties of an honorable life. Each seeks to round out a symmetrical and perfect character; to broaden the mind and give courage to the heart. Each gives encouragement to merit and to industry. Each gives bounteously of its stores of learning to those who seek it. Each hangs the laurel wreath of its approval on the brow of him whose life is honorable and just. Each frowns upon the evil and smiles upon the good. And so, with good reason, we love and respect them both and delight to do them honor. And upon occasions such as this we speak and listen to words in praise of them; for no one can say, in speaking of either school, aught but good of "Our Legal Alma Mater."

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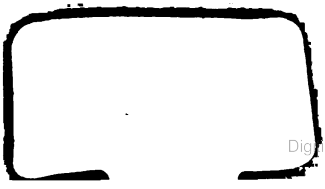
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